THE

BODY

OF THE

COMMON-LAW

OF

England,

As it ſtood in Force, before it was altered by Statute or Acts of *PARLIAMENT.*

Together with an exact Collection of ſuch Statutes, as have altered, or do otherwiſe concern the ſame.

Whereunto is alſo annexed certain *Tables* containing a *Summary* of the whole Law, for the help and delight of ſuch Students as affect *Method.*

By *Edmund Wingate* of *Grays-Inn*, Eſq;

The Fourth Edition corrected and amended.

2. 4°

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I do allow the Reprinting of this Book, Intituled, *The Body of the Common-Law of* England. *By* Edmund Wingate, *Esq;*

March 29*th*. 1678.

Fra. North.

Rec Jan 17, 1899.

The Preface.

THE Summary *of the Common-Law (extracted, for the most part, out of Sir* Henry Finch *Knight, his learned Treatise of the Law) being intended only to present the Original Frame of that Law, and not capable of comprehending the* Rules *or* Maxims *of the several Titles of Law, therein contained: It is conceived expedient here further to present the same Authors continued Method of the same Law (conformable to that Table) which contains the* Rules *of* Law *inserted under their proper Titles respectively; so as the Student by often reading over, and fixing in his Memory the Order and Matter of this Treatise, may thereby attain such a certain notion of the Common-Law, as may make him apt and ready to apprehend any case may be put to him, or any Law Book he shall read: Howbeit, although the* Rules *here propounded are regularly true, and conformable to the Ancient Common-*Law, *yet they have been, and still are subject to be altered by two other Laws,* viz. *the* Statute-Law, *and the* Law *of* Reason: *As for the first, it hath been a* Law *framed in all Ages by the Prudence of* Parliaments

ments *for prevention of Inconveniencies found in the* Common-Law, *according to the Condition of the People, and State of Affairs in the ſeveral Times, when it was made: A brief Collection whereof,* (viz. *of ſo much as alters, or otherwiſe concerns the* Common-Law) *is hereunto annexed. The other is as Ancient as the Creation, and coming into the World with Man cannot be abrogated: this laſt many times controuls the* Common-Law, *when in reſpect of ſome Accidents or Circumſtances, the Judges are conſtrained to make a conſtruction according to one or more Rules of Reaſon* (*if not*) *againſt* (*at leaſt varying from*) *a poſitive* Rule *of* Law, *as might be exemplied by many Inſtances, if it were now convenient to inſiſt thereupon: But that being deferred to a fitter opportunity, the* Abſtract *following invites your ſerious and indulgent Peruſal.*

THE

THE BODY OF THE COMMON-LAW OF ENGLAND.

CHAP. I.

I. THE Common-Law of *England* is a Law uſed time out of mind throughout the Realm.

II. The Realm of *England* is divided into Counties, (in all 39) and each County into ſeveral *Towns*, a Precinct which anciently contained ten Families, called *Tithings*, and ten of thoſe Tithings made a Precinct called an *Hundred*.

III. In ſome Counties, Towns, and other places of the Realm, there be ſpecial Uſages time out of mind, differing from the Common-Law, which are called *Cuſtoms*.

IV. A County is a part of the Realm, entirely governed by one Sheriff.

V. Every one ought to be Inhabitant within ſome

Tithing, and there find ſureties for his good behaviour.

VI. Divers Towns have *Hamlets* in them, and ſome ſpecial places there be, out of any Town or Hamlet.

VII. The perſons within the Realm are to be conſidered, either as one entire Body, or as particular perſons.

VIII. As one entire Body it conſiſteth of the King, and his Subjects.

IX. The King is the Head of the Common-wealth, immediately under God.

X. And therefore the King hath a Shadow of the Excellencies that are in God, in a ſimilitudinary manner given him: As,

XI. Infiniteneſs.

XII. Perfection.

XIII. Majeſty.

XIV. Soveraignty.

XV. Power.

XVI. Perpetuity.

XVII. Juſtice.

XVIII. Truth.

XIX. He hath alſo a Prerogative in all things, that are not injurious to the Subject.

XX. In regard of the King, the Queen his Wife is participant of divers Prerogatives above other Women.

XXI. His Subjects are the Members of the Common-wealth, and are Barons and Commons.

XXII. The Barons are called the Peers of the Realm,

XXIII. All the reſt are Commons.

XXIV. The particular perſons, are natural perſons, or Bodies Politique.

XXV. The Natural Perſons are every man.

XXVI. A Body Politick is a Body in fiction of Law, that endureth in perpetual Succeſſion; ſuch is the King alone,

alone, and by himſelf conſidered, and a Parſon (called) the *Rector* of the Church.

XXVII. The Parſon in regard of his continual attendance upon that ſacred function, is freed from all perſonal charges, that may hinder him in his Calling.

XXVIII. So is every other Clerk within Orders.

XXIX. To the Parſon belongeth the Tenth of all manner of yearly increaſe.

XXX. Every Parſon muſt be preſented to the Ordinary, who is to admit him.

XXXI. And then the Arch-Deacon is to put him in poſſeſſion, by delivering the Ring of the Church Door, and ringing the Bells.

XXXII. The Incumbent hath not the meer right in him of Land in the Right of his Church.

XXXIII. Therefore every Act, which he doth with ſuch Land, may be avoided, when he ceaſeth to be Incumbent, except ſuch as are done by conſent of Patron and Ordinary, which bind for ever.

XXXIV. If the Church be void ſix months, the Ordinary may *Collate*, or appoint a Clerk of his own; and if it be void ſix months after his time, then the Metropolitan, and ſix months after his time, the King may preſent, if the Patron preſent not before them.

XXXV. When one Church is not able to find the Cure, the Ordinary by conſent of the Patrons may unite it to ſome other.

XXXVI. Beſides thoſe Corporations, that were at the Common-Law, there be divers other, which have grown of later time, by ſpecial foundation and election, whereof ſome are aggregate of many perſons, *viz.* of an Head and Body: Others conſiſt in one ſingle perſon.

XXXVII. Theſe Corporations are Temporal or Spiritual.

XXXVIII. The Temporal are made by the King as Major and Commonalty; alſo Colledges, as Maſter, and Fellows, *&c.*

XXXIX. Divers Towns are ſo incorporate before time of memory, and are called *Boroughs.*

XL. The Spiritual ones were for the moſt part made by the Pope, but had their power to purchaſe from the King.

XLI. Theſe are alſo of two ſorts, *viz.* Regular, or Secular.

XLII. Regular, which have entered into Religion, profeſſing to vow three things, *viz.* *Obedience*, voluntary *Poverty*, and perpetual *Chaſtity.*

XLIII. And therefore theſe are dead perſons in Law, only their Head hath power to purchaſe or do ſuch other things to the uſe of the Houſe: And of this ſort are Abbot and Covent, Prior and Covent, *&c.*

XLIV. Secular, are ſuch as have not entered into Religion, as Biſhop and his Chapter, Maſter of an Hoſpital and his Brethren, Guardian of a Chappel and his Chaplains, *&c.* alſo Arch-Deacons, and the like.

XLV. Touching the Biſhop and his Chapter (which make but one Body) their poſſeſſions are divided, ſo as the Biſhop hath part by himſelf, and the Chapter the reſidue, which Chapter conſiſteth of a Dean as the chief, and Prebendaries, or ſuch like, who are moſt properly termed the Chapter: And of theſe alſo the poſſeſſions are for the moſt part divided, the Dean having ſome part ſolely in the right of his Deanary, and the particular Prebendaries ſome other part in the right of their reſpective Prebends: The reſidue the Dean and Chapter have together; and every of them is to ſuch purpoſe incorporate by himſelf.

XLVI. Theſe Spiritual Corporations are ſometime pre-

preſentative, ſometimes dative, perpetual or removeable ſometimes elective, and have a common Seal.

XLVII. To them alſo Parſonages may be appropriate by the Patron, Ordinary, and King, and Vicars endowed to ſerve the Cure.

CHAP. II.

I. OF the Common-Law there be two parts, the one concerneth Poſſeſſions, the other Puniſhment of offences.

II. A Poſſeſſion is whatſoever may be enjoyed.

III. *The King ſhall have to his own uſe all the Poſſeſſions of a Fool Natural, during his Ideocie.*

IV. When one hath the Poſſeſſion of any thing to anothers uſe, this was accounted nothing, but as a Matter in Conſcience and Chancery.

V. Sundry men poſſeſſing the ſame thing by purchaſe, are Joynt-Tenants, or Tenants in common.

VI. Joynt-Tenants, which poſſeſs by the ſame Title.

VII. And here, the Survivor ſhall have the whole in the ſame ſort as he had his part, excepting only preſent Intereſts of the thing it ſelf granted by him that dieth.

VIII. Tenants in common are they, which poſſeſs by ſeveral Titles.

IX. To Poſſeſſions this is general, that they may be granted.

X. *Every Grant, made by the King upon ſurmiſe or ſuit of the party, ſhall be taken moſt beneficially for the King, and againſt the party.*

XI. *No Grant of his is good, when it appeareth within the body of the Grant, that the King is deceived.*

XII. *His Grant ſhall not enure to any other intent than that, which is preciſely expreſſed within the Grant.*

XIII. A grant by an Infant under the age of 21 years, one out of his right mind, or compelled thereunto, either by *dures* of Impriſonment, or fear of ſome bodily hurt threatned, as loſs of life and member, or though it be but of Impriſonment, may be avoided at any time, if they deliver it with their hand.

XIV. But if they deliver it not with their hand, nothing at all paſſeth.

XV. So it is alſo of a grant made by one that hath no underſtanding.

XVI Yet grants of an Infant, in reſpect of having neceſſary things, cannot be avoided.

XVII. Other grants of his, where himſelf hath like wiſe benefit, are only voidable.

XVIII. To this place belongeth *Exchange*, which is a mutual grant of equal Intereſts, each in exchange of o ther.

XIX. Preſcription is as available as any Grant.

XX. A Poſſeſſion is reſpective or abſolute.

XXI. A reſtrictive Poſſeſſion is upon a limitation, o condition.

XXII. Upon a limitation which ceaſeth upon the do ing, or not doing of ſomething.

XXIII. Upon condition, which is only defeaſible upo the doing or not doing of ſomething.

XXIV. Abſolute, which is neither upon limitation o condition.

CHAP. III.

I. POſſeſſions are in poſſeſſion, or in Action.

II. In poſſeſſion, which one doth enjoy.

III. In Action, which one ought to enjoy, either reſpect of a Right or a Title.

IV. Right, when a Wrong was done before.

V. Tit

V. Title, when no wrong was done.

VI. Of things in action no ſtranger ſhall take advantage.

VII. Therefore things in action cannot be granted, but to him that hath poſſeſſion, and that by Releaſe or Confirmation.

VIII. Releaſe is a paſſing of the Grantors Intereſt.

IX. Confirmation is a ratifying of the Grantees poſſeſſion.

X. The grant of every thing in action, and of ſuch things in poſſeſſion, as cannot paſſe by the liverie of the Hand, muſt of neceſſity be by Deed.

XI. A Deed is a Writing ſealed and delivered, and belongeth always to him, whoſe poſſeſſion is made by it.

XII. But a Writing read in another form to one, that cannot read, is not his Deed at all, though he ſeal and deliver it.

XIII. A Deed, is a Deed Poll, or Indenture.

XIV. Poll, which is the only Deed of the Grantor.

XV. Indenture, which is the mutual Deed of both.

XVI. An Indenture barreth every of the parties from ſaying contrary to any thing therein contained.

XVII. Sometimes alſo bare acts work an Eſtopple in like ſort.

CHAP. IV.

I. A Poſſeſſion is an Hereditament or Chattel.

II. Hereditament is a Poſſeſſion, which one may have an Eſtate in.

III. One born of parents out of the Kings Allegiance, is diſabled to enjoy any Hereditaments.

IV. *Therefore ſuch a one purchaſing any it is the Kings.*

V. An Eſtate is Particular, or an Inheritance.

VI. A Particular Eſtate is uncertain or certain.

VII. Uncertain, which is determinable at anothers pleaſure, as an Eſtate at ſufferance and at will.

VIII. At ſufferance, when after lawful occupation, he continueth poſſeſſion without authority.

IX. At will, when an Eſtate is made during pleaſure.

X. And this is according to the Cuſtome, as a Copyholder; or at pleaſure otherwiſe, as a bare Tenant at Will.

XI. Certain, which is not ſo determinable, and it is called a *Term*, whereupon may depend a remainder or reverſion.

XII. Remainder, is the reſidue of an eſtate, at the ſame time appointed over.

XIII. Reſidue, is the reſidue of an Eſtate, not at the ſame time appointed over.

XIV. Terms are forfeited, by plucking the Inheritance out of him that hath it.

XV. Terms may be ſurrendred, that is, to him that hath the next and higher Eſtate.

XVI. A Term is for Years, or for Life.

XVII. A Term for life is for his own life, or for anothers life.

XVIII. Where the Tenant for anothers life dies before *Ceſty que vie*, he that can firſt hap it, ſhall enjoy out the Term, and is called an *Occupant*.

XIX. The preſent Eſtate for life is termed a *Freehold* and may be ſo in Deed, or in Law.

XX. In Deed, when he is actually ſeiſed of it.

XXI. In Law, before his Entry, when it is caſt upon him by courſe of law.

XXII. The Releaſe of an Inheritance or of an Eſtate for life, is not good to one that is but Tenant for years without privity.

XXIII. To theſe two Eſtates a Warranty doth be long

long, which is an assurance warranting such an Estate.

XXIV. Every Exchange hath a Warrantie knit by Law.

CHAP. V.

I. INheritance is an Estate descendable to his Heirs, that hath actual possession.

II. An Heir is the next or worthiest of whole Blood, being also of Blood to the first Purchaser.

III. He that is begotten out of Marriage is called a Bastard, and is of blood to none, but in Law accounted *Nullius Filius*.

IV. A Bastard therefore cannot inherit.

V. But Marriage following after, giveth him the right of Inheritance, if after the Fathers death he enter before his younger Brother, born of the same Father and Mother within espousals, and continue the possession all his life without interruption.

VI. If the next be Women in equal distance, as Daughters, Sisters, Aunts, *&c.* they shall inherit alike, and are but as one Heir.

VII. Where the general entry of one is of the rest, if they list.

VIII. The Inheritance that descendeth shall be charged with the Deed of the Ancestor, binding himself and his Heirs.

IX. The Dying seized of the Inheritance and Freehold together, whereby the Land descends unto his Heir, taketh away the entry of every one, that may have an Action.

X. But claim upon the Land within a year before the death, or if they dare not upon the Land for fear of some bodily hurt, then as near the Land as they dare, saveth their Entry.

XI. A Fee-simple is a Fee-simple conditional or absolute.

XII. Con-

XII. Conditional is a Fee-ſimple to one and the Heirs of his Body.

XIII. This Eſtate before iſſue cannot be alienated; after iſſue had, becometh an abſolute Fee-ſimple.

XIV. But ſo, as if the Iſſue fail before the Alienation, the Donor ſhall have it.

XV. Hither belong Hereditaments given in Frank-marriage with ones Kinſwoman.

XVI. Abſolute, is a Fee-ſimple to one and his Heirs whatſoever.

XVII. This Eſtate deſcending to Females, if one of them have Lands of the ſame Anceſtor by Frank-marriage, ſhe ſhall have no more, unleſs ſhe be content, that the value thereof be allowed to the other.

XVIII. To this place are to be referred Lands given to a Corporation, which go in perpetual ſucceſſion.

XIX. Here, two ſpecial Eſtates for life, *Dower* and *Tenancy* by the courteſie of *England*, do ariſe after one death, that hath an Inheritance joyned with the Freehold.

XX. Howbeit, theſe Eſtates muſt be of a Fee-ſimple, or ſuch an Eſtate taile, as may go to the Iſſue had between the Donees.

XXI. Dower is an Eſtate, whereby the Woman hath the thirds in ſeveralty.

XXII. She muſt be nine years of age at the time of her Husbands death, otherwiſe ſhe ſhall not be endowed.

XXIII. Detaining of Deeds concerning Inheritance deſcended to the Heir, is a Bar of her Dower.

XXIV. If the Husband at the Church Door (*ad oſtium Eccleſiæ*) or being heir apparent by his Fathers or Mothers conſent (*ex aſſenſu patris* or *matris*) preſently upon affiance endow her of any certainty, as of the whole, moity, or leſs part, &c. This will bar her of her thirds, if ſhe agree to it.

XXV. Tenancy by the courteſie of *England* is an Eſtate, whereby of an actual poſſeſſion the Husband

that hath issue by her born alive, shall have the whole.

CHAP. VI.

I. HEreditaments are Tenements or bare Hereditaments.

II. A Tenement is a possession holden, the Fee-simple whereof, when he that hath it dieth without Heir, commeth to the Lord.

III. Of this sort are Lands and Advowsons.

IV. Land is a Tenement in Manual occupation.

V. Under the name of Land are comprehended, not only Gardens, Meadows, Pastures, Woods, Rivers, &c. but also Messuages, Mills, Yards, Tofts, Castles, and the like.

VI. Churches and Church-yards belong to the Incumbent.

VII. Prescription here hath no force.

VIII. *All Land is holden of the King immediately, or by means, himself not having any higher upon Earth, of whom to hold.*

IX. *Escheates of all Cities appertain to the King.*

X. *All Mines of Gold and Silver, or wherein the Gold or Silver is of the greater value, are the Kings.*

XI. Amongst Copartners, the eldest upon partition, shall have the chief House.

XII. Seisin delivered of Land always passeth a Freehold.

XIII. Otherwise a Freehold of Land cannot pass safe by release and confirmation, where they are by way of enlarging an Estate.

XIV. They may also sometimes pass by Exchanges, Endowments, or Surrenders.

XV. An Estate made within view of the Land is good Liverie of seisin, if the other enter in the Feoffers life time.

XVI. An Advowson is an interest of presenting to a Church.

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XII. Conditional is a Fee-ſimple to one and the Heir of his Body.

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CHAP. VII.

I. BAre Hereditaments are thoſe, which are not holden, and concern the Land or the Perſon.

II. Thoſe that concern the Land are extinguiſhed, or gone for ever, when he that hath them, hath alſo the poſſeſſion of the Land, that they concern, in as high and continuing an Eſtate, as he hath the Hereditaments.

III. Otherwiſe they are but ſuſpended or gone for a time.

IV. Theſe are leviable by diſtreſs, or ſuch as cannot be diſtrained for.

V. Diſtreſs is a taking of Chattels, found upon the ſame land, for ſatisfaction of Arrerages.

VI. *The King may diſtrain in any other land of the ſame mans for his Service or Rent Charge.*

VII. The Diſtreſs being put in ſome place, where the Owner may lawfully come by them, as, if they be things that have life, to give them meat, *&c.* he that diſtraineth ſhall not be charged, what hurt ſoever they receive.

VIII. Bare Hereditaments, that may be diſtrained for, are a Seigniorie, or Rent charge.

IX. Seigniories are Services, whereby Lands are holden.

X. Services are common to all certain Eſtates, or proper to Inheritances.

XI. Common, as Fealty, and Rent Service, whereof Fealty is incident to every ſuch Eſtate.

XII. And therefore the Seigniorie or Tenancie being altered, it muſt be done anew.

XIII. All other (both common and proper) grow by Reſervation.

XIV. Fealty is an Oath to be faithful to the Lord for the Tenements.

XV. Rent Service, is a Rent to be paid to the Lord at certain ſet times.

XVI. And

XVI. And to this place we may refer all Services that lie in feiſance.

XVII. Of which kind two amongſt the reſt are ſpecially to be conſidered, *viz.* Frankalmoigne, and Divine Service.

XVIII. Frankalmoigne, is when a man of the Church holdeth freely in Alms, for which he is bound to ſay Prayers.

XIX. But becauſe the Prayers are not limited in certain, he neither ſhall do Fealty, nor is ſubject to diſtreſs.

XX. The Lord muſt warrant ſuch a Tenant againſt himſelf and his Heirs, and ſave him harmleſs of all manner of Services againſt the Lords above.

XXI. Divine Service is a Spiritual kind of Service limited in certain.

XXII. Theſe are the Services whereby every certain Eſtate may be holden.

XXIII. There follow thoſe proper to Inheritances, the Grantee whereof ſhall hold of the Grantor by ſuch Services as he holdeth over, if other Services be not reſerved.

XXIV. Or the Grantor may appoint him to hold of the next Lord.

XXV. A Meſne muſt acquit the Tenant of all manner of Services againſt the Lords Paramont.

XXVI. But Doners in Frankmarriage cannot hold but by Fealty, and that of the Donor, until the fourth degree be paſt, who muſt alſo acquit them of all manner of Services.

XXVII. *One that holdeth of the King as of his Perſon, alienating the Free hold without Licence, forfeiteth the Land.*

XXVIII. Services proper to Eſtates of Inheritance, are Homage and Suit or Court.

XXIX. Homage is an Oath of Fidelity, acknowledging himſelf to be the Lords Man: In the doing whereof the

the Tenant muſt be ungirt, uncovered, kneel upon both knees, and hold both his hands together between the Lords hands, ſitting before him.

XXX. This is to be done to the Lord himſelf, and but once during the Tenants life.

XXXI. *The Kings Chamberlain ſhall take Homage for him.*

XXXII. When an Inheritance deſcendeth to Copartners, the eldeſt only ſhall do Homage.

XXXIII. *But if they hold of the King, all of them muſt do it.*

XXXIV. When one and his Anceſtors, whoſe Heir he is, have held by homage of a Lord and his Anceſtors whoſe Heir the Lord is, time out of mind, and the Lord hath received homage, that bindeth him to warrant and acquit the Tenant.

XXXV. Suit of Court is a Service by coming to the Lords Court: And here Land in the Lords hands (where of ſeveral men hold by ſuit of Court) is termed a *Manor*, but the Land conſidered apart from the Service, is termed *Demeſnes*.

XXXVI. The particular kinds of Services (whereby Lands of inheritance are diſtinguiſhed) are Soccage and Knight Service.

XXXVII. Both draw unto them certain Commodities to the Lord, partly in the Tenants Life, and partly after his death.

XXXVIII. That in his Life is reaſonable *Aid*, or Portion towards the making of the Lords eldeſt Son a Knight; and towards the Marrying of his eldeſt Daughter.

XXXIX. The other after his death, are Wardſhip and Relief.

XL. Wardſhip is the Cuſtody of the Body and Land of the Heir within Age, which ſhall be till fourteen of a Woman.

XLI

XLI. Relief is a Portion to be paid by the Heir to the Lord.

XLII. Soccage is a Tenure to be done out of War.

XLIII. Where the next of the Kin, to whom the Inheritance cannot descend, shall have the Heirs Wardship till fourteen, to the Heirs own use.

XLIV. Here, for relief the Lord shall have presently so much as one years Rent amounts unto.

XLV. *Tenure by Soccage in Chief giveth the King primer seisin, or the Value of that Land by a year, if the Heir be of the age of fourteen years at his Ancestors death.*

XLVI. Knight Service is a Service touching War, to be done by the Body of a Man.

XLVII. To all Knight Service Homage is incident.

XLVIII. Here the Wardship is the Lords to his own use, and that till 21 of an Heir Male.

XLIX. The Wife shall be barred of her Dower, so long as she detaineth the Heir from him.

L. Wardship of the Body giveth the Wards marriage to the Lord.

LI. If one hold sundry Lands of divers Lords, the Wardship of Body goeth to the Lord of that Land, which the Tenant held first, and this is termed, Tenure by Priority.

LII. *The King shall have the Wardship of the Body, though the Tenure of him be by Posteriority.*

LIII. The eldest Child being Heir apparent to his Father, shall not be in Ward for his Body during his Fathers Life.

LIV. *Tenure by Knight Service in chief, giveth to the King the Wardship of all other Lands also.*

LV. *It giveth him likewise Primer seisin, or the Value of them all by half a year, if the Heir were in Ward; by a whole year, if he were not; which Primer seisin must be paid, and Relief also.*

LVI. Re-

LVI. Relief for Land holden by Knight Service, a mounteth to an *C. s.* for a whole Knights Fee, to a Marks for a Barony, and to a *C.* Pounds for an Ear dom.

LVII. If the Heir be within age at the Tenants deat no relief ſhall be paid to the Lords that are to have th Wardſhip.

LVIII. *Grand Serjeancy*, viz. *Tenure of the Kings Pe ſon, to do him a more ſpecial Service whatſoever by the Pe ſon of a Man, is a ſpecial Knight Service in chief, where t King inſtead of Relief, ſhall have the value of the Land a year.*

LIX. Rent charge is a Rent with liberty to diſtrain.

CHAP. VIII.

I. BAre Hereditaments concerning Land (for whi no diſtreſs can be taken) are a Rent Seck, a Common.

II. A Rent Seck is a Rent without liberty to ſtrain.

III. When a Rent is granted for equality of Partitio amongſt Copartners, this Rent may be diſtrained fo though no ſuch liberty be granted.

IV. The Grant of a Seigniorie, Rent charge, and Re Seck, as alſo of a Remainder or Reverſion of any of the or of the Land it ſelf, is nothing worth without Attor ment, *viz.* the Agreement of the Tenant, that preſe ly muſt be charged.

V. In the Grant of a Reverſion depending upon a Fr hold, the Attornment of the Freeholder is ſufficien though he be not the Tenant, that preſently muſt charged.

VI. Common, is a profit to be taken in anoth Land.

CHA

CHAP. IX.

I. BAre Hereditaments that concern the perſon, are meerly of the perſon themſelvs, or by reaſon of the perſon.

II. Of the firſt ſort are Villeins.

III. A Villein is ſuch a Servant, as himſelf and whatſoever he poſſeſſeth is the Lords, if he claim it.

IV. *The Lord cannot ſeize his Villein in the Kings preſence.*

V. The Children of a Villein are alſo Villeins.

VI. Villenage beginneth, by confeſſing a mans ſelf to be one in Court of Record.

VII. A Villein is manumitted or ſet free, when the Lord enableth him to poſſeſs any thing againſt himſelf.

VIII. Thoſe by reaſon of the perſon are Annuities, and Corodies, or Offices.

IX. Annuitie is a yearly Rent to be had of the perſon of the Grantor.

X. Corodie is a Portion for ones Suſtenance.

XI. Office is a Duty of Attendance upon a Charge.

CHAP. X.

I. BEſides the Hereditaments already handled, there be certain other derived from the Kings Prerogative, which are termed Franchiſes.

II. A Franchiſe is a Royal Priviledge in the hands of a Subject.

III. It may be forfeited by miſuſing of it.

IV. The Kinds of Franchiſes are divers, and almoſt infinite.

V. Of ſuch ſort are Warrens, Markets, Fairs, Toll of every Buyer for things he buyeth there, not being for

his own expences, and whatſoever liberties or commodities elſe, that (created at firſt by the Kings ſpecial Grant, or of their own nature belonging to him) are given to common perſons to have any manner of eſtate in.

CHAP. XI.

I. SUch then is the Nature of an Hereditament in his ſundry ſorts and kinds.

II. Chattels are Poſſeſſions, wherein there cannot be ſeveral Eſtates.

III. All ones Chattels, whether in poſſeſſion, or that any is indebted to him in, may be given away or deviſed by his Teſtament.

IV. Teſtament is the Appointment of ſome perſon to adminiſter them for him after his death.

V. The Executors muſt prove the Will (to be a true one) in the Spiritual Court, and be ſworn to ſee it performed.

VI. If many Executors be made, and one refuſe, yet he may adminiſter at his pleaſure.

VII. But an Executor once adminiſtring, can never refuſe after.

VIII. Executors muſt anſwer all certain Duties of the Teſtator.

IX. But ſo as Duties, that grow by ſpecialties are to be anſwered before other duties, and legacies to be laſt of all delivered.

X. In theſe Deviſes the Teſtators intent (ſtanding with the Rules of Law) ſhall be taken.

XI. The Executor of an Executor is Executor to the firſt Teſtator.

XII. If no Will be made, the Ordinary ſhall adminiſter all the Chattels that were in his poſſeſſion.

XIII. But whether any will be made or no, his Wife and

and ſuch Children as are not advanced by him in his life, ſhall have a part to their own uſe, *viz.* one third of all (after the debts paid) to his Wife; and another third part to his Children: *This ſeems to be the ancient Common Law by* Mag. Cart. *Cap.* 18. See *F. N Br.* 122 *l.*

XIV. Chattels are real or perſonal.

XV. Real, as terms for Years, and Wardſhip.

XVI. Perſonal, as Plate, Jewels, Gold, Silver, Implements of Houſhold, Cattel, and all Goods and Moveables whatſoever, Corn ſown upon the ground, &c.

XVII. The Owner-ſhip of a Chattel perſonal is termed a Property, which of wild Beaſts cannot be in any, nor after they are made tame, longer than they remain in ones poſſeſſion.

XVIII. *Treaſure in the Earth, and* Treaſure Trove, *or Coin beind found, is the Kings.*

XIX. *Cattel alſo, that ſtray into anothers Land, are the Kings after a year and a day, if being proclaimed at the Market in two ſeveral Towns next adjoyning, the Owner do not claim them.*

XX. *Goods wrecked are alſo his.*

XXI. *The King being Tenant in Common of an entire Chattel perſonal, ſhall have the whole.*

XXII. Goods, that belong to an Alien Enemy, any body may ſeize to his own uſe.

XXIII. The taking of Goods by an Alien Enemy in Battail, deveſteth the Property from the Owner, if he come not before Sun-ſet to claim them.

XXIV. Church-wardens are enabled to have Goods to the behoof of the Pariſh.

XXV. To Chattels Perſonal, Bailment, and Contract do belong,

XXVI. Bailment is a Delivery of Goods in poſſeſſion, and is either to keep, or imploy.

XXVII. To keep, when only the Cuſtody is committed

mitted to him, and is a ſimple Bailment or Pledge.

XXVIII. A ſimple Bailment, when he receiveth them to keep for another; whether it be for the Bailer to redeliver him again, or for a Stranger to bail them over to him.

XXIX. A Pledge is when he receiveth them in aſſurance for another thing had of him at the time.

XXX. The Bailment of goods to imploy is, when the Bailee hath the Things themſelves to uſe to anothers profit.

XXXI. Contract is a mutual Agreement for the very property of perſonal things.

XXXII. Here, the duty growing upon it, cannot be apportioned.

XXXIII. Of this kind of Contracts are Buying and Selling, Borrowing and Lending, and ſuch like.

XXXIV. The Sale of another mans goods in Market overt altereth the property, if Toll be paid for them.

XXXV. Hither belong certain (as it were) Contracts in Law, though not ariſing from the ſpecial Agreement of the Parties: As Trover and Converſion, *&c.*

XXXVI. Theſe are the things that belong to Chattels perſonal in general: For the Intereſt of perſonal things uncertain, Accord and Arbitrement lie.

XXXVII. Accord is an Agreement between the Parties themſelves upon a Satisfaction executed.

XXXVIII. Arbitrement is an Award of Satisfaction by others, whom they chuſe to judge between them.

XXXIX. The Award of a perſonal Chattel altereth the property thereof.

CHAP. XII.

I. WE have hitherto ſpoken of Poſſeſſions, (being the firſt and hardeſt part of the Law;) The other

other remaineth, which miniſtreth Juſtice in the Puniſhment of Offences.

II. An Offence is the doing of any wrong, and it is a wrong without force, or to the which force is coupled.

III. In thoſe of the firſt kind, the Offender is to be amerced, *viz.* to pay a petty ſum of Money to the King, and if he be a Peer of the Realm, then C. S.

IV. The Kings Wife ſhall never be amerced.

V. Offences without force are Treſpaſſes upon the Caſe, or Real Wrongs.

VI. Treſpaſs upon the Caſe is ſuch an Offence whereby any thing is endammaged, and it is a Miſuſer, or Deceit or Conſpiracy.

VII. Miſuſer, when by meer wrong it is endammaged.

VIII. Of this kind there be many, and thoſe of divers ſorts; as if a man malicioufly utter any falſe ſlander to the endangering of one in Law.

IX. The touching of him with ſome heinous Crime.

X. The impairing his trade of life.

XI. If one having another mans goods, convert them to his own uſe.

XII. If a Sheriff ſuffer one in execution for Debt to go at large.

XIII. If a Smith prick my Horſe, or kill him in Cure.

XIV. It being committed to the Goal, the Goaler of malice puts upon me ſo many Irons, or otherwiſe uſeth me ſo hardly, that I become lame thereby, *&c.*

XV. But two above the reſt do here require more ſpecial conſideration, *viz.* Diſturbance and Nuſance.

XVI. Diſturbance is the hindering of that, which in right belongeth to one to do.

XVII. Nuſance is an Annoyance done to ones Hereditament.

XVIII. All manner of Nuſances are to be removed,

and common Nuſances any man may pull down.

XIX. If in Play one win anothers Money by falſe Dice, or if he that ſelleth any thing, do upon the ſale, warrant it to be thus and thus, whereby the other is deceived.

XX. Conſpiracy is, where two or more conſpire to do one wrong, or the like.

XXI. There are certain other Offences againſt the Law, which are in the nature of treſpaſſes upon the caſe, and by the Kings Prerogative puniſhable like to them.

XXII. Of this ſort are Nonſuit in an Action, fault in the Original Writ, or (by the Sheriff) in the return of a Writ, making default when he ſhould appear, and whatſoever other offences (not being with force and arms) which offer no direct injury to a common perſon.

CHAP. XIII.

I. HItherto of Treſpaſſes upon the Caſe: A real wrong is that which medleth with the Freehold otherwiſe than it ought.

II. A real wrong is a diſcontinuance or an Ouſter.

III. Diſcontinuance is, when he that hath an Eſtate Tail, or a Fee-ſimple in anothers right, maketh a larger Eſtate of the Land than he may.

IV. Warrantie of an eſtate of Inheritance, or for life deſcending upon him, that ought to have ſuch Eſtate, maketh a Diſcontinuance.

V. Diſcontinuance taketh away the Entry of thoſe that come to have Title after the death of the Diſcontinuer.

VI. If he (whoſe Entry is barred by a deſcent or diſcontinuance) have the Free-hold caſt upon him by a new Title, he ſhall be in of his ancient Title, which is termed a *Remitter*.

VII. Ouſter is, when the Free-holder is put out.

VIII. The

VII. This Ouſter is of a Free-hold in Deed or in Law.

IX. Of the firſt ſort are Diſſeiſin and Uſurpation.

X. Diſſeiſin is the Ouſting of him that hath Free-hold in Deed, by putting or holding him out of the Land.

XI. This may be alſo of a Rent or other Profit out of Land, by diſturbing him in the means of coming to it: As,

XII. In every Rent Encloſer and Foreſtaller.

XIII. Encloſer is, when the Tenant incloſeth the Land, ſo as he cannot come to diſtrain or demand it.

XIV. Foreſtaller is, when the Tenant beſetteth the way with force and Arms upon his coming.

XV. Of this Nature is the menacing of him, when for doubt of ſome bodily hurt he dare not come.

XVI. In a Rent-Service, and Rent-charge, Reſcous, and Replevin.

XVII. Reſcous, when either the party having diſtrained, the Diſtreſs is reſcued, or being upon the land to diſtrain, cannot be ſuffered to do it.

XVIII. Replevin is, when an Action of Replevin is brought upon a Diſtreſs taken.

XIX. In a Rent-charge, and Rent-ſeck, Denier.

XX. Denier is, when the Rent (being demanded upon the Land) is not paid.

XXI. Uſurpation is, when the Church becommeth full by the Preſentment of a wrong Patron, and the Inſtitution of the party preſented by the Ordinary.

XXII. *But againſt the King Induction only doth it.*

XXIII. Of the ſecond ſort are Intruſion and Abatement, being of a Free-hold in Law.

XXIV. Intruſion, which is after the death of the Tenant for life.

XXV. Abatement, which is after the death of one that hath the Inheritance.

CHAP. XIV.

I. SUch is the nature of an Offence without force.

II. An Offence with force is a Treſpaſs or an Offence againſt the Crown.

III. Treſpaſs is a criminal Offence puniſhable by a fine to the King.

IV. For this the party muſt be impriſoned, until he do compound.

V. Treſpaſſes touch Poſſeſſions, or the Perſon.

VI. Poſſeſſions, when the wrong is done in them; namely, in Goods or Land.

VII. Treſpaſs in Goods is the wrongful taking of them with pretence of Title.

VIII. And therefore ſuch a Treſpaſs altereth the property of the Goods.

IX. Treſpaſs in Land is, when the Treſpaſs is done upon the actual Poſſeſſion thereof.

X. Beaſts and other Chattels may be diſtrained by him that hath damage by them.

XI. Hither belongeth Ejectment, when a Termer for years of Land is ouſted.

XII. *Here the King having Poſſeſſion, none can put him out.*

XIII. Treſpaſſes to the Perſon are with pretence of violence, or violence indeed.

XIV. Pretence of violence, as Menaces and Aſſaults.

XV. Menaces are threatning words of beating one or ſuch like; through fear whereof ones Buſineſs is foreſlowed.

XVI. Aſſault is an unlawful ſetting upon ones perſon.

XVII. Hither belong, lying in wait, beſetting his Manſion-houſe, and not ſuffering his Servants to go in and out, *&c.*

XVIII. Vi-

XVIII. Violence indeed is falſe Impriſonment, or bodily hurt.

XIX. Falſe Impriſonment is an unlawful Reſtraint of liberty.

XX. Bodily hurts are either outward Violences onely or Rape.

XXI. Outward Violences onely are Battery and Mayhem.

XXII. Battery is the wrongful beating of one.

XXIII. Mayhem is the wrongful ſpoyling of a Member defenſive in fight.

XXIV. Rape is the carnal abuſing of a Woman againſt her Will.

CHAP. XV.

I. BEſides theſe Offences, being (for the moſt part) betwixt party and party, there are other Offences to the damage of the publique in the nature of Treſpaſſes, and are termed *Contempts*.

II. Theſe Offences are puniſhed not onely by fine, but ſometimes by corporal pain, and ſometimes by loſs of Member.

III. As the Common-Wealth is a Body Politique which conſiſts of the King, as the Head, and of his Subjects as the Members thereof; ſo are theſe Offences to be diſtributed.

IV. Publique Offences againſt the King are, To diſobey the Cings Command by his Writ or Proclamation, to diſobey any thing ordained by Statute, *&c.*

V. And therefore the Sheriff that ſerves not the third Writ, makes a Contempt.

VI. Publique Offences to the Body of the Common-Wealth are firſt thoſe which trench againſt the Domeſtical Safety thereof, as againſt the *Heart* of the Common-Wealth.

VII. Which

VII. Which Safety consists in this, that there be *pax domi*; and therefore here, the Offences are Rebellions, Insurrections, Riots, Routs, unlawful Assemblies, breach of the Peace, and good Behaviour, false News, Barratrie, Eves-dropping, &c. Also all Trespasses with Force, which may be prosecuted by Indictment as well as by the Suit of the Party grieved.

VIII. An unlawful Assembly is, when above the number of two assemble together with purpose to do some unlawful Act.

IX. Rout, when they set forward to do it.

X. Riot, when they do it indeed.

XI. In the second place come the Offences, that are against the strength of the Realm, and the Defence thereof against Forain Enemies, as against the Hands and Arms of the Common-wealth.

XII. Of this sort are these; To send Victuals or Armour beyond Sea, in comfort and aid of the Kings Enemies: To go beyond Sea, without the Kings License, whereby the King and the Realm may be enfeebled, &c.

CHAP. XVI.

I. THE third sort are Offences against the Justice of the Realm, as against the Thighs and Legs thereof: As,

II. Judges which delay or pervert Justice.

III. Officers negligent or corrupt, who do not execute their Offices as they ought to do.

IV. Goalers, who by fear of punishment cause their Prisoners to become Provers to accuse others, or teach the Lay-people in their custody to read for the Salvation of their lives.

V. Enditors, who give warning to Enditees, whereby the Council of the King and the Justices are discovered.

VI. He

VI. He that by negligence or voluntarily ſuffers one under arreſt to go at large.

VII. And here, if the Arreſt be for Felony, ſuch voluntary eſcape is Felony.

VIII. Hither alſo all manner of extortion in Officers is to be referred.

IX. A Juror, that appears and is challenged, and afterwards, when he is found indifferent, and is called to be ſworn, makes default: He ſhall be fined to the value of his Land by the year.

X. All force againſt the Juſtice of the Realm.

XI. The breaking of Priſon: And here, if it be by the party himſelf, it is Felony.

XII. Reſcous, when a Stranger, or the party himſelf diſturbs the arreſting of a Felon or other.

XIII. Affrayes in diſturbance of Juſtice: As

XIV. Such as come forcibly into the Kings Court in affray of the Peace, ſo as the Jurors dare not give their Verdict.

XV. Such as hire evil people to beat the people of the Court, Jurors of Enqueſt, or any other.

XVI. To go armed in the Kings Palace.

XVII. He that ſtrikes a man in *Weſtminſter*-Hall ſhall loſe his right Hand.

XVIII. He that ſtrikes a Juror in the preſence of the Juſtices ſhall have the ſame puniſhment, and beſides ſhall ſuffer perpetual Impriſonment.

XIX. Conventicles, which comprehend Conſpirators and Confederators.

XX. Such as receive people to their Avowment, to maintain them right or wrong.

XXI. Maintenance, when a man maintains a Suit in Law.

XXII. Champarty, when he maintains it, to have part of the thing ſued for.

XXIII. Offences in favour of Malefactors: As,.

XXIV. Miſ.

XXIV. Miſpriſions, *viz.* the concealment of Treaſon or Felony, whereof the firſt is puniſhable by perpetual Impriſonment.

XXV. Theft-boot, when a Man takes his goods from a Thief with purpoſe to favour and maintain him: The puniſhment whereof is Ranſom and Impriſonment.

XXVI. Not aſſiſting the Sheriff, Conſtable, or other Officer.

XXVII. Contempt of Juſtice: As,

XXVIII. Such as flye for fear, when Treaſon or Felony is done by any.

XXIX. Such as in caſe of Treaſon or Felony tarry the Exigent.

XXX. Such as ſuffer themſelves to be out-lawed.

XXXI. The King may impriſon the Body of him that is outlawed, until he purchaſe his Charter of Pardon.

XXXII. Perjury and Subornation of perjury.

XXXIII. Forgery.

XXXIV. All other falſhood in matter of Juſtice.

CHAP. XVII.

I. THE fourth kind of publick Offences againſt the flouriſhing Eſtate of the Realm, as againſt the colour and ſanguine Complexion thereof.

II. And this, in divers manners, as well in matter of Traffick, Buying, Selling, and the like, as otherwiſe.

III. In matter of Traffick, Buying, and Selling, *&c.* As,

IV. Practices, which tend to make the Commodities of the Realm more dear: As,

V. To tranſport the commodities thereof without the Kings Licenſe, or paying his Cuſtomes.

VI. Fore-ſtallers, Regradors, and Ingroſſers, under which all Monopolies are comprehended.

VII. Conſpiracies of Merchants, Tradeſmen, and the

the like, who by combination amongſt themſelves, put certain prices upon Commodities, which are to be ſold.

VIII. Falſe Weights and Meaſures.

IX. Out of the courſe of Traffick; As,

X. Things which tend to the deſtruction of the Commodities of the Realm: As,

XI. Depopulation of Towns, and the like.

XII. Burning of a dwelling Houſe, or a Barn near adjoyning thereunto.

XIII. Burning Corn in a Barn, or the like.

CHAP. XVIII.

I. IN the ſixt and laſt place are ſuch Offences to be ranked, as are committed againſt the falſe paſſages and ways of the Country, as againſt the Feet and Toes of the Common-wealth: As,

II. Bridges, Cawſeys, High-ways, Streets, *&c.* broken, or out of repair.

III. To this place common Nuſances, Purpreſtures, *&c.* may be referred.

IV. Such Nuſances any man may abate.

V. And as to Nuſances, there is a Writ in the Regiſter.

VI. Where a Lazer or Leper will go in publique, the Writ *de leproſo amovendo* lies to remove him out of the company of men to ſome ſolitary place.

CHAP. XIX.

I. THus far of Treſpaſs, it remaineth to ſpeak of Offences againſt the Crown, which are Criminal Offences, puniſhable by death.

II. *Here alſo all the Offenders both Hereditaments and Chattels, not onely in poſſeſſion, but ſuch alſo as he hath but a right to, are forfeited to the King,* viz.

III. *Here-*

III. *Hereditaments, from the time of the Offence, and Chattels from the time of the Attainder only.*

IV. In theſe and all other Forfeitures, the Town is chargeable with the goods.

V. The Blood alſo is here corrupted.

VI. The Wife loſeth her Dower.

VII. *Thoſe that flie for fear of the Offence, forfeit their Chattels to the King.*

VIII. Acceſſaries after the Fact, *viz.* witting maintainers, and ſuch as voluntarily ſuffer one arreſted to eſcape, are guilty of the ſame offence.

IX. *Concealing the Offence forfeiteth Chattels, and Hereditaments alſo during life.*

X. Offences againſt the Crown are Felony or High Treaſon,

XI. Felony is an Offence of the Crown not immediately bent againſt the State.

XII. Here, the Forfeiture of the Offendors Inheritance is given to the Lord.

XIII. *The King is alſo utterly to waſt the Inheritance.*

XIV. Felony is bare Felony or Petty Treaſon.

XV. Bare Felony is a Felony of the loweſt nature, and is puniſhable by hanging.

XVI. This is ſingle or mixt.

XVII. Single, as Stealth and Man-ſlaughter.

XVIII. Stealth is the wrongful taking of goods without pretence of Title.

XIX. Inn-Keepers muſt anſwer for goods of their Gueſts ſtolen.

XX. *Goods confiscated which the Thief, attainted for ſtealing another thing, diſclaimeth to have any property in, and waifes,* viz. *which a Thief waiveth, are the Kings, if he ſeize them before the party from whom they were ſtolen.*

XXI. But if the party from whom they are ſtolen ſeize them firſt, or doing his diligeece to apprehend the Thief,

Thief, convict him afterwards, he ſhall have his goods again.

XXII. The ſtealing of goods which exceeds not the value of 12 *d.* (termed Petty Larcenie) doth onely forfeit Chattels.

XXIII. Man-ſlaughter is the killing of any perſon born into the World.

XXIV. But if one live a year after the Act committed, which was the cauſe of his death, it is no Felony in him that did the Act.

XXV. The killing of one by chance in doing a lawful Act, or in his own defence, flying as far as he may to ſave his life, forfeiteth onely Chattels.

XXVI. But the killing of one that attempteth to rob him, (whether upon the high way, or when men come to his Houſe and compaſs it about to burn it, though they do not burn it, whereupon he iſſueth out and killeth one of them) is neither Felony nor cauſeth any forfeiture at all.

XXVII. *Any unreaſonable thing killing a man, It, and every thing moving with it, is forfeit to the King, and theſe are termed* Deodands.

XXVIII. Man-ſlaughter is Chance-medly, or Murther.

XXIX. Chance-medly, is Man-ſlaughter without former Malice.

XXX. Murder is Man-ſlaughter upon former Malice.

XXXI. He that murdereth himſelf (we call him *Felo de ſe*) doth only forfeit his Chattels.

XXXII. Mixt Felony is that kind of bare Felony, which riſeth from the former, and it is Robbery or Burglary.

XXXIII. Robbery is Stealth from ones perſon by aſſault in the High-way.

XXXIV. Burglary is the Night-breaking of an Houſe

Houſe with an intent to ſteal or kill, though none be killed, nor any thing ſtoln.

CHAP. XX.

I. THus much of bare Felony: Petty Treaſon is a Felony of an higher nature than bare Felony is, the puniſhment whereof is Burning.

II. This is againſt mortal Creatures, or againſt God.

III. Againſt mortal Creatures, as Petty Treaſon (properly ſo called) and Sodomy:

IV. Petty Treaſon (properly ſo called) is the killing of any to whom private obedience is due; as ones Maſter, Miſtris, Husband, &c. for which (inſtead of burning) a man ſhall be hanged and drawn.

V. Sodomy is a carnal Copulation againſt nature, *viz.* of a man or woman in the ſame ſex, or of either of them with Beaſts.

VI. Againſt God is that, which is immediately bent againſt his Majeſty, as Hereſie and Sorcerie.

VII. Hereſie is a preſumptuous oppugning of an Article of Faith.

VIII. In caſe of Hereſie, the party before he can be burnt, muſt be convict in a Provincial Synod, and after Abjuration make a Relapſe into the ſame, or ſome other Hereſie.

IX. Sorcery is a conſulting with Devils, and containeth under it Conjuring, Negromancy, and ſuch like.

CHAP. XXI.

I. HIgh Treaſon is an Offence of the Crown directly bent againſt the State.

II. Alſo to kill the Chancelor, Treaſurer, a Juſtice of either Bench, a Juſtice in Eyre, of Aſſize, or Oyer and Terminer being in their places, and doing their Offices, is High Treaſon.

III. Here

III. Here, the punishment is, by drawing, hanging, and quartering for a Man, and drawing and hanging for a Woman.

CHAP. XXII.

I. THus we have gone through both the Parts of the Law: There remaineth yet one General and Common Affection scattered throughout the whole Law, (as the Blood is through the Body) which we call *Action.*

II. Action is the handling of a Cause in controversie before certain Judges, who (in respect of the place where they are set to do justice) are commonly called a *Court.*

III. Of all apparent faults proceeding from the Action the Court must take notice.

IV. Every Court hath power to award forth Precepts, and if the Precept be not served, another of the like nature shall go forth till it be served.

V. To every Court do belong Clerks and Officers.

VI. A Clerk is he that serveth for things to be done in Court.

VII. Any Error that appeareth to the Court to be the Clerks mistaking, may be amended at any time.

VIII. Officers are those, who are to serve the Courts Precepts, and to certifie the Court thereof.

IX. Courts are Courts of Record, or Court-Barons.

X. Of Record, which are the Kings Courts.

XI. These have such credit, that no Averment can be taken against any thing there entred or done.

XII. Things also that cannot be granted but by deed, pass here by matter of Record.

XIII. *The King taketh Hereditaments by matter of Record onely.*

XIV. Villeinage beginneth onely by confessing a mans self to be one in a Court of Record.

XV. Duties of the Teſtator growing by Record muſt be anſwered by Executors before other Duties.

XVI. Courts of Record, are the Parliament, or Courts that have ordinary juriſdiction.

XVIIi The Parliament is a Court of the King, Nobility, and Commons aſſembled, having an abſolute power in all Cauſes.

XVIII. *Statutes of Reſtraint bind not the King, unleſs they concern the Common-Wealth, or be be ſpecially named.*

XIX. *He may licenſe things forbidden by the Statutes.*

XX. *But where the Statute ſaith his Licenſe ſhall be void, there it muſt have a Clauſe of* Non obſtante, viz. *This Clauſe, notwithſtanding any Statute,* &c.

XXI. Courts of Record, which have ordinary Jurisdiction, are either General, whoſe Jurisdiction extends throughout the Realm, or but within ſome County.

XXII. The former are thoſe that are holden in *Term*-time onely, the whole year having four Terms, *viz.* Michaelmas and Hillary Term, Eaſter and Trinity Term, and every Term ſeveral days of Return.

XXIII. Michaelmas Term (beginning the 10 of *October*, and ending the 28 of *November*) hath eight Returns, *Octabis Michaelis, Quindena Michaelis, Tres Michaelis, Menſe Michaelis, Craſtino Animarum, Craſtino Martini, Octabis Martini, & quindena Martini.*

XXIV. Hillary Term (beginning the 23 day of *January*, and ending the 12 of *February*) hath four Returns, *Octabis Hillarii, Quindena Hillarii, Craſtino Purificationis, & Octabis Purificationis.*

XXV. Eaſter Term (beginning 17 days after Eaſter, and ending the Munday next after Aſcenſion day) hath five Returns, *Quindena Paſchæ, Tres Paſchæ, Menſe Paſchæ, Quinque Paſchæ, & Craſtino Aſcenſionis.*

XXVI. Trinity Term (beginning 12 days after Whitſunday, and continuing 19 days) hath five Returns,

turns, *Octabis Trin. Quind. Trin. Craſtino Johannis Baptiſtæ, Octab. Johannis Baptiſtæ, Quindenæ Johannis Baptiſtæ.*

XXVII. To theſe Courts belongeth the power of ſending forth Writs.

XXVIII. A Writ is a *Latine* Letter of the Kings in Parchment, ſealed with his Seal.

XXIX. All Writs have a Salutation, *Rex*, to ſuch an one *ſalutem*, and a Concluſion expreſſing the Place, as *apud Weſtmonaſterium*, &c. and the time (both day and year) of making it; if it be returnable, the day of the Return is alſo appointed in it.

XXX. The third Writ (termed the *Pluries*) not ſerved, is a Contempt.

XXXI. And therefore the third Writ hath always this Clauſe in it, *vel cauſam nobis ſignifices*; ſo may the ſecond (termed the *Alias*) alſo have, if the Plaintiff will.

XXXII. The Officer of theſe higher Courts is the Sheriff, to whom is committed the cuſtody of the County.

XXXIII. For Matters Spiritual the Ordinary is their Officer.

XXXIV. Theſe General Courts are the Chancery and two Benches, the Kings Bench and Common Place.

XXXV. Chancery, which dealeth in Suits concerning the King.

XXXVI. Here the Judge is the Chancellor, having the Cuſtody of the Great Seal of *England*, under which paſs all Writs out of the Chancery with *Teſte meipſos*.

XXXVII. *The Kings Grants are alſo entred of Record in this Court.*

XXXVIII. *Such Grants are effectual, to paſs a Free-hold, from the King without any Livery.*

XXXIX. *And being Matters of Record, they take*

effect from the time of the Date.

XL. In default of a Chancelor the Lord Keeper of the Great Seal hath his Authority.

XLI. The Keeper (or Maſter) of the Rolls is an Aſſiſtant to this Court.

XLII. In the Kings Bench and Common Pleas, the Judges are one Chief Juſtice, and three (and ſometimes more) other Juſtices.

XLIII. The *Teſte* of their Writ is *Teſte Johanne Popham*, the Chief Juſtice for the time being.

XLIV. The Kings Bench is that, which dealeth properly with Pleas of the Crown.

XLV. The Common Place, which dealeth properly with Common Pleas.

XLVI. *The King hath a proper Court of this kind for all things touching his Revenues, called the* Exchequer.

XLVII. The Judges whereof are called Barons, being one Chief Baron and three other.

XLVIII. And this alſo hath a Court of Chancery before the Chancellor and Barons of the Exchequer, called the *Exchequer Chamber*.

XLIX. The Eſcheator here is a ſpecial Officer, and hath a kind of a Court for finding out the Kings Title to Lands, Tenements, and other things.

L. Thoſe Courts, which deal but within ſome County, are the Sheriffs Turn, and the Coroners Court.

LI. The Sheriffs Turn is a Court of Record for Offences, which are common Grievances.

LII. Whereunto every man of the age of 12 years and upwards (being within the Precinct) oweth ſuit, and muſt be there ſworn to the Kings Allegiance.

LIII. But Peers of the Realm are excepted.

LIV. The Offender here ſhall be amercied, and diſtrained for that Amerciament.

LV. The Coroners Court is a Court for matters of the

the Crown, as Battery, Mayhem, Rape, Murder, &c.

LVI. Upon juſt execution to the Sheriff, Proceſs out of the higher Courts ſhall be directed to the Coroners.

LVII. *The Steward and Marſhal of the Kings Houſe have a Court for all perſonal Actions, and Pleas of the Crown ariſing there.*

LVIII. By reaſon of certain Franchiſes, grow two other Courts of Record, which deal within ſome certain Precinct, *viz.* A Leet, and a Court of Pipowders.

LIX. A Leet is a Court of Record, having the ſame Juriſdiction within an Hundred, or ſome leſs Precinct, which the Sheriffs Turn hath in the County, the profit thereof being to a common perſon.

LX. A Court of Pipowders is a Court of Record, incident to Fairs and Markets, for all Actions ariſing there, and the Suit muſt at the ſame time be commenced.

LXI. *The King (by commiſſion under his Letters Patents) may erect other Courts at his pleaſure.*

LXII. Such were Juſtices in *Eyre*, and ſuch are Courts of Record in Corporations and other places, by ſpecial Charter.

LXIII. Theſe are the Courts of Record: A Court Baron is a Court of a common perſon.

LXIV. This Court is for perſonal Accompts under forty Shillings.

LXV. Theſe cannot be kept oftner than every three weeks.

LXVI. The Proceſs here is by precept to the Bailiff.

LXVII. The Suitors are the Judges.

LXVIII. A Court-Baron is the Lords, or a County-Court.

LXIX. The Lords Court is either of a particular Mannor, or of an whole Hundred.

LXX. The Hundred Court is that, whereunto all

the Inhabitants within the Hundred owe ſuit.

LXXI. The County Court, which is incident to the Sheriff, and hath Juriſdiction over the whole County.

CHAP. XXIII.

I. OF an Action there be two parts, the Suit and the Judgment.

II. Suit, is the parties dealing in the Action.

III. Here for their help they are allowed Councel learned in the Law.

IV. The Suit hath two parts, the beginning and the proceeding.

V. The beginning is the proper Duty of the Plaintiff.

VI. This alſo hath two parts; the firſt matter of the Suit, and the Original Proceſs.

VII. The firſt matter of the Suit muſt always be brought in that County, where the cauſe of Suit groweth.

VIII. The firſt matter of the Suit is for every man, by Writ out of the Chancery; or in Courts, where Writs lie not, by Plaint or Bill; for the King alone, by Inquiry.

IX. In all of the firſt kind the Plaintiff muſt find ſurety (by ſome that will be his Pledges) to proſecute the ſuit.

X. And theſe may be either to the Officer, or to the Court where the Suit is.

XI. A poor Man inſtead of Sureties ſhall give his Faith to proſecute it.

XII. Writs that begin the Suit, are Original or Commiſſional.

XIII. Original, which appoint the firſt Proceſs (if the Plaintiff find Pledges) returnable in the Kings Bench, or Common Pleas.

XIV. This

XIV. This must be true Latine, and also formal.

XV. And it must express the Name of Baptism, and Sirname, or (in lieu thereof) the Name of dignity both of the Plaintiff and Defendant.

XVI. Where there be many of one name, diversity of the names must be put by addition of Elder, Younger, and the like.

XVII. The Kings Servants in his Court, or others by special Grace of the Chancellor may here be admitted to find Pledges in the Chancery.

XVIII. Writs Original are concerning Common Pleas, or appeals that concern life.

XIX. Those that concern Common Pleas lie not for or against a Feme Covert without her Husband.

XX. Many having or giving joyntly cause of Action, may sue or be sued together in one.

XXI. Several Actions of one nature may be joyned in one Original with several *Præcipes*, or Commandments to be executed.

XXII. *Here in place of action against the King, Petition must be made unto him in Chancery.*

XXIII. *And that (in case of Hereditaments) though the King have granted the same away.*

XXIV. *Whereupon Process shall go out against the Grantee to maintain his Title.*

XXV. But whilst personal things, seised for the King, remain in the Officers hands, the party that hath right may sue the Officer, or disturb him to take the profit.

XXVI. Petition is a Supplication declaring the parties right, where mention must be made of all the Kings Title.

XXVII. The Writs, which concern Common Pleas, are Real or Personal: And they both are again *Præcipes* or *Si fecerit te securum*'s.

XXVIII. A *Præcipe* is that which willeth the Sheriff

riff to command the Defendant to do somewhat in certain, that the Plaintiff sueth for, which if he do not, then to serve the first Process.

XXIX. The form hereof is, *Præcipe* A, *quod reddat* B, &c. *Et nisi fecerit*, &c. *tunc summon*, &c.

XXX. A *Præcipe* is, a *Præcipe quod reddat*, or a *Præcipe quod faciat*.

XXXI. A *Præcipe quod reddat*, which lieth for things in render.

XXXII. A *Præcipe quod faciat*, which lieth for things not in render, *viz.* in Fesance as a Writ *de consuetudinibus & servitiis, secta ad molendinum*, &c. or in Sufferance, as a *Quod permittat*, &c.

XXXIII. A *Si fecerit te securum* is that, which willeth the first Process to be served without more ado.

XXXIV. The Form thereof is, *Si* A *fecerit te securum de clamore suo prosequendo, tunc summon*, &c.

CHAP. XXIV.

I. REal Actions, where a Free-hold shall be recovered, are possessory or in the right.

II. Possessory, which are to recover a Possession.

III. In the Right, which are to recover a possession mixt with the Right.

IV. And both these may be of a possession or right in himself, or descended from his Ancestor.

V. Real Actions in the right, are either founded upon the right, or for the meer right.

VI. Real Actions, where the Free-hold shall be recovered, lie onely against the Tenant of the Free-hold.

VII. With the Free-holder may be joyned in action any having Title to enter.

CHAP.

CHAP. XXV.

I. A Real *Præcipe quod reddat*, is that which is for real things in render, and it is a Plea of Land, or other ſuch *Præcipe*.

II. A Plea of Land, which is for Land or other ſuch things in Demeſne.

III. Where Land in certain is demanded, it muſt always be brought in a Ville, or place known out of any Ville.

IV. A Plea of Land is a Writ of Entry, or a Writ ſhewing the Demandants Title.

V. A Writ of Entry is that, which is to diſprove the Tenants poſſeſſion by the means of his Entry.

VI. Wherein Tenant in Fee-ſimple demanding of the poſſeſſion of his Anceſtor, ſhall ſay in the Writ, *Quod clamat eſſe Jus, & Hereditatem ſuam.*

VII. A Writ of Entry is either againſt the firſt party, or in the degrees.

VIII. Againſt the firſt party, when it is againſt him, to whom the firſt Alienation was, or that made the Diſſeiſin.

IX. That in the degrees, is in the *per*, or in the *per* and *cui*.

X. In the *per*, when he, againſt whom it is brought, commeth in immediately under the firſt party, as Heir unto him, or by alienation from him.

XI. In the *per* and *cui*, when he, againſt whom it is brought, commeth in immediately under the firſt parties Heir or Alience.

XII. Writs of Entry grow either without wrong at the firſt, or upon a wrong.

XIII. Thoſe without a wrong at the firſt are grounded upon a determination of the firſt Eſtate, or upon a diſability in the perſon that made it.

XIV. Upon

XIV. Upon a Determination of the Eſtate, either by reaſon of a particular Eſtate ended, or a Condition broken.

XV. Of a particular Eſtate ended, is an *ad terminum qui præteriit*, or *Entry ad communem legem.*

XVI. *Ad terminum qui præteriit*, is upon a deforcement by the Leſſee, or a Stranger, after the Leaſe for years or life expired.

XVII. *Entry ad communem legem*, is when Tenant for life doth alien and die.

XVIII. Of a Condition broken, as *Cauſa Matrimonii Prælocuti.*

XIX. *Cauſa Matrimonii prælocuti*, is for a Woman that giveth Land to a Man to marry her, and he will not.

XX. Thoſe grounded upon the diſability of the perſon, are a *Dum fuit infra ætatem*, and a *Dum non fuit compos mentis.*

XXI. *Dum fuit infra ætatem* is by the Infant, when he commeth to his full Age, upon an alienation by himſelf, or his Anceſtor being within Age,

XXII. But the Clauſe that he is of full Age, (*viz. qui plenæ eſt ætatis*) ſhall not be inſerted in the Writ, if either it be brought in the degrees, *per, cui*, or *poſt*, or upon the Anceſtors Alienation.

XXIII. *Dum non fuit compos mentis*, is upon the Alienation of himſelf, or his Anceſtor being of *non ſanæ Memoriæ.*

CHAP. XXVI.

I. THoſe upon a wrong at the firſt, are upon a diſcontinuance or an Ouſter.

II. Upon a diſcontinuance, as a *Cui in vita*, or a *ſine aſſenſu capituli.*

III. A *Cui in vita*, for the Wife after the Husbands death upon his Alienation of her Fee-ſimple, Fee-tail, or

or

or Free-hold, or of ſuch a Joynt Eſtate in them.

IV. And in this Writ, claiming a Fee-ſimple, ſhe ſhall ſay, *Quod clamat eſſe Jus & Hereditatem ſuam.*

V. If it be an Eſtate of Fee-ſimple, and ſhe bring not (in her life time) a *cui in vita*, the Heir ſhall have a *ſur cui in vita.*

VI. And of this nature is a *cui ante divorcium*, when it is brought by the Wife after Divorcement, upon ſuch an Alienation, as before.

VII. A *ſine aſſenſu capituli*, is for the Succeſſor of a Biſhop, Abbot, Prior, Dean, Prebendary, Maſter of an Hoſpital, &c. after the diſcontinuance of the Predeceſſor.

VIII. Upon an Ouſter, is either upon an Intruſion, or a Diſſeiſin.

IX. That upon an Intruſion is called a Writ of Intruſion, and is for him in the Reverſion or Remainder in Fee-ſimple or for Life, after the Death of Tenant for Life in Dower, or by the Courteſie.

X. Upon a Diſſeiſin, is when the Diſſeiſin is done to him or his Anceſtor, as a Writ of Entry in the *Quibus*, or (which is all one) in the nature of an Aſſize.

CHAP. XXVII.

I. WRits that ſhew the Demandants Title are meer poſſeſſory or in the right.

II. Meer poſſeſſory are thoſe, which are brought by the next Heir upon an Abatement after the death of any Anceſtor, other than his Father, Mother, Brother, Siſter, Uncle, Aunt, Nephew, Neece, ſeized in Demeſne, as of a Fee-ſimple, the day of his death: Of this ſort are,

III. A Writ of *Ayel*, after the death of his Grandfather or Grandmother.

IV. A Writ of *Beſayel*, after the death of his Great Grand-

Grandfather or Great Grandmother.

V. A Writ of Coſinage, after the death of his Great Great Grandfather, or Grandmother, or any other Collateral Couſin, ſave thoſe above-mentioned in the ſecond *Rule* of this *Chapter.*

VI. In the right, is that which is to diſprove the right of the Tenant, and is a Writ of Right in this nature, or a *præcipe in capite.*

VII. A Writ of Right in his nature, which ſheweth how the Demandants Right is grown, and is a *Formedon*, or a Writ of Eſcheat, and Dower *unde nihil habet.*

VIII. A *Formedon* is a *præcipe quod reddat*, entitling the party by the form of the Gift, and is a *Formedon* in Remainder, or a *Formedon* in Reverter.

IX. A *Formedon* in Remainder, is for him in the Remainder for life or in fee, upon a Leaſe for life expired.

X. A *Formedon* in Reverter is for the Donor, after the Eſtate in Tail determined.

XI. A Writ of Eſcheat, is for the Lord upon an Eſcheat.

XII. Dower, *unde nihil habet*, is a Writ for ones Dower, who hath received no part at all thereof.

XIII. A Writ of Dower lieth againſt Gardein by Knights Service.

XIV. A *præcipe in capite* is a *præcipe quod reddat* for the meer right of lands holden in chief.

CHAP. XXVIII.

I. OTher real *præcipe quod reddats* are thoſe, which are in reſpect of Seigniory, as a writ of right of ward, and a writ of right *ſur diſclaimer.*

II. A writ of right of ward is to recover the wardſhip.

III. If it be for the recovery of the wardſhip of the body, it lieth as well for Gardein in Soccage, as for Gardein by Knight Service.

IV. But if it be for the recovery of the wardſhip of the

the land, it lieth onely for Gardein by Knight ſervice.

V. A Writ of right *ſur-diſclaimer*, is for the Lord to prove the lands to be beholden of him, when in an action, where the ſervices ſhould be recovered, the Tenant in Court of Record diſclaimeth to hold of him.

VI. If in this Writ the Lord can prove the land to be holden of him, he ſhall recover the land it ſelf.

CHAP. XXIX.

I. A Real *præcipe quod faciat* is either to recover Hereditaments, or ſome real things that concern them.

II. Thoſe that are to recover ſome Hereditament, demanding of ones own Seiſin, are in the *debet* and *ſolet*.

III. But demanding of the Anceſtors Seiſin, they are in the *debet* onely, and then are in all reſpects, as writs for the meer right.

IV. Theſe are either in reſpect of a Seigniory, or to recover ſome other Hereditament.

V. In reſpect of a Seigniory, as a Writ *de conſuetudinibus & ſervitiis*, and a *ſecta ad molendinum*.

VI. A writ *de conſuetudinibus & ſervitiis* lieth for the Lord that hath an Eſtate for life, or a greater Eſtate in the Seigniory, and is deforced of his Services.

VII. *Secta ad molendinum* lieth for the Lord, when the Tenants that hold of him by grinding their Corn at his Mill, withdraw their Suit, and grind elſewhere.

VIII. Thoſe that are to recover ſome other Hereditament, are a *Quare impedit*, and a *Quod permittat*.

IX. A *Quare impedit* lieth upon a diſturbance, where he or his Anceſtors, or thoſe from whom he claimeth, having at any time before preſented to a Church, himſelf is now diſturbed.

X. A *Quod permittat* lieth for one that hath common of paſture for his Beaſts, being diſturbed by a Stranger,

ſo

ſo as he cannot uſe his Common.

XI. Theſe that are to recover ſome real thing concerning Hereditaments, are a *Curia claudenda*, or a Covenant Real, and other Writs ſounding in that nature.

XII. A *Curia claudenda*, lieth for a Free-holder, when one that hath a Cloſe next adjoyning to him, which he ſhould keep incloſed, will not do it.

XIII. A Writ of Covenant Real lieth upon a Covenant to do a thing Real, as to levy a Fine of Land, *&c.*

XIV. Writs in the nature of a Covenant Real, are a Writ of *Meſne*, and a *Warrantia cartæ*.

XV. A Writ of *Meſne* lieth for the Tenant againſt the *Meſne*, when the Lord *Paramont* doth diſtrain the Tenant whom the *Meſne* ought to acquit.

XVI. A *Warrantia cartæ* lieth for him that hath Lands or Tenements warranted unto him.

XVII. Here the Warrantors Hereditaments are liable to the warrantie from the time of the action brought.

XVIII. Upon theſe Writs a Fine may be levied.

XIX. A Fine is the acknowledging of an Hereditament in the Kings Court, according to the Covenant, to be his right that doth complain.

XX. Here, one of them muſt needs have ſuch an Eſtate at the time of the Fine levied.

XXI. That whereof the Fine is levied, or any thing contained in it, may be granted back again to the Conuſor by the ſame Fine.

XXII. Fines executed bind all perſons, if claim be not made within a year.

XXIII. A Feme-covert joyning with her Husband in a Fine, it bindeth her forever.

XXIV. Therefore the Juſtices muſt examin her, to ſee that ſhe do it willingly.

XXV. A Grant by Fine of a Seignorie, Rent-charge, Rent-ſeck, Remainder, or Reverſion, is preſently good, ſaving for bringing Actions that run in privity between the Tenant and him.

CHAP.

CHAP. XXX.

I. THus much of Real *Præcipes*; Real *Si fecerit te ſecurum* are an Aſſize, and a *Furis utrum*, or other.

II. An Aſſize is ſuch a Real Plea meerly in poſſeſſion.

III. And this is either an Aſſize of ones own poſſeſſion, and an Aſſize of Mortdanceſter, or an Aſſize of Darrein preſentment.

IV. An Aſſize of ones own poſſeſſion, is an Aſſize of Novel Diſſeiſin, or an Aſſize of Nuſance.

V. An Aſſize of Novel Diſſeiſin, is for a Free-holder againſt his Diſſeiſor (whether it be of Land or Rent) or the Balliff of the Diſſeiſor, if himſelf cannot be found.

VI. This Diſſeiſin being of a Rent-charge or Rent-ſeck, all the Tenants of the Land muſt be named, though he were diſſeiſed by one Tenant onely.

VII. If the Lord diſtrain the Tenant too often for the Rent or Services, the Tenant may have an Aſſize.

VIII. An Aſſize of Nuſance is for him, whoſe Free-hold is ſpoiled by any Nuſance.

IX. An Aſſize of his Anceſtors poſſeſſion onely, called an Aſſize of Mortdanceſtor, is for the next Heir upon an Abatement after the death of his Father, Mother, Brother, Siſter, Uncle, Aunt, Nephew, or Neece, who was ſeiſed in Demeſne, as of Fee-ſimple the day of his death.

X. An Aſſize, which may be either of his own or his Anceſtors poſſeſſion, called an Aſſize of Darrein preſentment, is upon a Diſturbance, when himſelf or his Anceſtor did laſt preſent.

XI. A *Furis utrum* is ſuch a Real Plea, founded upon the right of a Parſon or Vicar upon his Predeceſſors Alienation.

XII. This is the nature of an Aſſize, and *Furis utrum*

trum: Thoſe that follow are a *partitione facienda*, and *nuper obiit*, (both which between privies in blood) or a *Quo jure*.

XIII. A *partitione facienda* lieth between Co-partners to compel partition to be made.

XIV. Therefore here for equality of partition, things that otherwiſe cannot, may be granted without deed.

XV. A *nuper obiit* lieth againſt one privy in Blood, that entreth after the death of the Anceſtor, that died ſeiſed in demeſne.

XVI. A *Quo jure* lieth for the Tenant of the Land, when one challengeth Common, there to try whether in right he ought to have any or no.

CHAP. XXXI.

I. THus far of Real Actions: A Perſonal Action is that, wherein damages ſhall be recovered.

II. This Action being once ſuſpended, is gone for ever.

III. Executors bringing ſuch an action, muſt do it in all their names, as well of thoſe that refuſe adminiſtration, as of the reſt; but an action may be brought onely againſt thoſe that do adminiſter.

IV. In perſonal actions growing in reſpect of a poſſeſſion in common, Tenants in common are in all reſpects as Joynt-tenants.

V. In perſonal *præcipes* damages only ſhall be recovered, where the thing it ſelf cannot be had.

VI. Perſonal *præcipes quod reddat*'s are Debt and Detinue.

VII. Debt, when any thing is due upon a contract.

VIII. If the Debt be Money due from one to another in their own right, it is in the *debet* and *detinet*, otherwiſe it is the *detinet* onely.

IX. *When any of the Kings Goods come into a Subjects hands,*

hands, his Land at all times after is chargeable for the ſame, into whoſe hands ſoever it afterwards comes.

X. Of this nature is a Writ of Annuity, which lieth for him that hath an Annuity, be it money or other things, as Cloaths, Bread, *&c.*

XI. This Writ is in the *debet* for any other thing, as well as for Money, and not in the *detinet*, therein differing from an Action or Debt.

XII. Detinue is, when any thing is with-holden.

XIII. Perſonal *Præcipe quod faciats*, are an Action of Accompt and an Action of Covenant.

XIV. An Action of Accompt, which is for an Accompt to be made.

XV. *The King may have it againſt Executors, and ſo can no other.*

XVI. An Action of Covenant, which is for a Covenant to be holden.

CHAP. XXXII.

I. PErſonal *Si fecerit te ſecurum*'s are of things done without force, or where force is coupled with it.

II. Of thoſe without force, ſome go not ſo far as breach of the Peace, others do break it.

III. Thoſe that break not the Peace are theſe that follow.

IV. *Rationabili parte bonorum*, for the Wife and Children of one deceaſed, to have their part of the goods.

V. *Valore maritagii* for Guardian in Knight-ſervice, when the Heir at full age refuſeth to ſatisfie him for his marriage.

VI. A Writ of Forfeiture of Marriage, which is to recover the double value againſt ſuch an Heir, marrying himſelf within age, without the Lords aſſent, and at full

age putting out the Lord.

VII. Intruſion of Ward, when the Heir by Knight-Service entreth, and putteth out the Lord.

VIII. *Ejectione cuſtodiæ*, for any Guardian by Knight-Service or Soccage, againſt a ſtrange ejecting him of the land or body of the Heir, or both.

IX. *Quare ejecit infra terminum* for leſſee for years, againſt the Feoffee in Fee, or for life, of his leſſor.

X. Here, the term it ſelf ſhall be recovered, if it be not paſt.

XI. Treſpaſs upon the Caſe of things not againſt the peace, as *Aſſumpſits* for an Aſſumption or Promiſe to be performed, and the like.

XII. This lieth not againſt Executors.

XIII. Here, and in all other Actions of Treſpaſs upon the Caſe, the Writ muſt comprehend all the matter of ſubſtance.

XIV. The other that break the peace, but not *vi*, are called Treſpaſſes againſt the Peace.

XV. And of this kind are eſpecially (of the nature of ſuch a Treſpaſs) an Action of Deceit, and an Action of Conſpiracy.

XVI. An Action of Deceit, is upon any deceit committed.

XVII. Here, if it be upon a Non-ſummons in a Plea of land, whereby he loſeth the land by default, or ſuch like, it muſt be brought during the life of the Summoners.

XVIII. In a Writ of Deceit the Plaintiff ſhall recover all that he hath loſt.

XIX. Conſpiricy (in the nature of a Treſpaſs) is upon conſpiring by many to prejudice a man wrongfully.

XX. Such are Treſpaſſes without force: an Action of Treſpaſs coupled with force, is an Action of Treſpaſs for a Treſpaſs done.

XXI. An

XXI. An Action of Treſpaſs brought in a Court Baron, muſt not ſuppoſe it to be done by force and arms.

XXII. And therefore no *Capias* lieth there in ſuch caſe.

XXIII. Special Actions of Treſpaſs are theſe that follow.

XXIV. *De Parco fracto*, for taking a Diſtreſs out of the Pound.

XXVI. Reſcous, for taking a Diſtreſs away before it be impounded.

XXVI. *Ejectione firmæ*, when Leſſee for years of land is ouſted, where the Term it ſelf ſhall be recovered, if it be not paſt.

CHAP. XXXIII.

I. THeſe are Common Pleas: an Appeal that concerneth life, is the parties private Action, proſecuting alſo for the Crown, in reſpect of a Felony.

II. Appeals of the death of a man are given to the Heir of the party ſlain.

CHAP. XXXIV.

I. THus far of Original Writs: Commiſſional are theſe, which are not returnable but determinable before the parties to whom they are directed.

II. Theſe are Commiſſionary, or meer Commiſſions.

III. Of the firſt ſort are thoſe that give Authority to a Court Baron to hold plea.

IV. Here the Suitors are the Judges, not the Sheriff or Steward.

V. Theſe are a Writ of right Patent, or a *Juſticies*.

VI. In both theſe the ſame courſe is holden, as in thoſe that went before.

VII. A Writ of right Patent is a Writ for the meer Right of Tenements holden of a common perſon, to be brought in the Lords Court of that Mannor.

VIII. If he hold no Court, or otherwiſe yield his Court to the King for that time, then it may be in the Kings Court with this Clauſe, *Quia* B *capitalis Dominus nobis inde remiſit curiam.*

IX. This Writ muſt ſhew by what ſervice the Land is holden.

X. The Writ remaineth always with the party himſelf.

XI. If one privy in blood, not paſt the third degree, enter after the death of the Anceſtor, that died not ſeized, in ſuch caſe, a Writ of Right Patent is called a Writ of Right *de rationabili parte terræ.*

XII. A Woman that hath received part of her Dower, ſhall have a Writ of Right of Dower patent for the remnant, whereof ſhe is to be endowed.

XIII. A *Juſticies* is a Writ that giveth the County Court power to hold plea.

XIV. And therefore it is called a Vicontial Writ; of this ſort are,

XV. An Aſſize of petty Nuſance, where a Mill, or ſuch like is levied to ones Nuſance.

XVI. All of them are comprehended in theſe Verſes,

rica ca gultum ges lendinum
Fab, fur, porta domus, vir, gur, mo, murus ovile,
Et pons: traduntur hæc vicecomitibus.

XVII. Admeaſurement of Dower by the Heir, when his Guardian, or himſelf endowed the Wife in his Nonage of more than ſhe ought to have.

XVIII. Admeaſurement of paſture by a Commoner, whom another Commoner wrongeth, by putting in more beaſts into the Common than he ſhould.

XIX. Here,

XIX. Here, all the Commoners ſhall be admeaſured.

XX. A *Nativo habendo* for the Lord, that hath an Inheritance in any Villein, when his Villein departeth away from him.

XXI. Here, if the Villein plead that he is frank, the Sheriff cannot proceed.

XXII. *Rationabilibus diviſis*, for that Lord, whoſe land or waſte hath by little and little been incroached upon within time of memory until now, By a Lord, whoſe Signiory adjoyneth in another Ville, againſt the Lord ſo incroaching.

XXIII. A *Homine replegiando*, for one impriſoned, or in priſon deteined, where he ſhould not.

XXIV. A *Replevin*, for goods or chattels diſtreined.

XXV. This may be both by Writ and Plaint in any Court Baron, as well as in the County Court.

XXVI. This being by Plaint, it ſhall not proceed, if any thing touching the freehold come in queſtion.

XXVII. Upon the *Pluries* not ſerved by the Sheriff, his power is determined, and the parties ſhall plead in Bank.

XXVIII. Many of the Actions that went before both for real things to be done, as *Conſuetudinibus & ſervitiis*, *ſecta ad molendinum*, *Quod permittat*, Meſne, Dower *unde nihil habet*: And alſo perſonal Actions, as annuity, debt, detinue, accompt, covenant, treſpaſs, to what ſumme ſoever, may as well be brought in the County by *Juſticies*, as to be returnable in the Common Place.

XXIX. Meer Commiſſions are theſe that follow, being all of them to be directed to choice perſons, ſuch as it ſhall pleaſe the King.

XXX. *Oyer* and *Terminer*, to hear and determine upon ſome heinous offence committed.

XXXI. In theſe and ſuch like Commiſſions he pro-

perly, a Writ of Aſſociation, and *Sinon omnes.*

XXXII. Aſſociation is a Writ for other to be allociate into their company.

XXXIII. *Si non omnes*, is a Writ for the reſt to proceed, although the other come not.

XXXIV. *Ad quod dannum*, to enquire what hurt it may be to the King, Country, or any other, for the King to grant ſuch or ſuch a thing.

XXXV. *Perambulatione facienda*, to enquire of the Bounds of two Seigniories or Towns, where an Incroachment by little and little is ſuppoſed to have been made.

XXXVI. This muſt be by the mutual aſſent of both Lords.

CHAP. XXXV.

I. SO far of Writs: It followeth, to ſpeak of Plaints and Bills, both being in ſuch Courts as hold plea without Original Writ.

II. A Plaint is in matters that concern Common Pleas.

III. A Plaint of Treſpaſs in a Court Baron ſhall not proceed, if the Freehold come in queſtion.

IV. A Bill is in Pleas of the Crown, as an Appeal of Felony, Mayhem, Rape, &c. may be by Bill before one Coroner of the County, finding firſt ſureties to the Sheriffs.

V. One, whoſe attendance is neceſſary in any Court, ſhall ſue and be ſued there in form of Plaint, which is called a Bill of *Privilege*.

CHAP. XXXVI.

I. THe King hath a ſpecial means of ſuit for trying of the right of Franchiſes, uſurped upon him, called a Quo Warranto, *and is to be brought before the Juſtices in Eyre.*

II. An Enquiry for the King is, when matter for the King is found by a Jury, called an *Enqueſt of Office.*

III. This

III. This may be before the Officers, as Sheriffs, Escheators, Coroners, &c. *Virtute officii*, *Brevis*, or *Commissionis*, to them directed.

IV. Here, the number of twelve is not of necessity requisite.

V. An Enquiry is an Office of presentment.

VI. An Office, which findeth matter to entitle the King to some possession.

VII. Upon as high a matter of Record to avoid the Office, as the Office it self, a man may traverse it.

VIII. If the Office be for personal goods, the party may always have a Traverse, or plead any matter unto it, unless the Escheator have accounted for them; and that although the Office find the Kings Title to be by matter of Record.

IX. *The King upon Office finding for him, if his Entry be lawful, and the Possessions to be had at the time is presently in possession.*

X. *Also he shall be answered all the mean profits from the time of his Title.*

XI. Upon an Office found *virtute officii*, whereby the King is entitled to ones wardship, the Heir shall never have *livery*, *viz.* the land delivered out of the Kings hands.

XII. But upon a perfect Office, *Virtute*, *Brevis*, or *Commissionis*, (if it be a special Writ or Commission, not a general one to inquire of all Wards) he may.

XIII. Therefore here the Heir is allowed these Commissions following, or Writs in the nature of such Commissions, *viz.* 1. For finding of an Office for the King. 2. For the having of the Land out of the Kings hand.

XIV. Those for the finding of an Office are, *diem clausit extremum*, *Mandamus*, and *Devenerunt*, to enquire, what lands holden of the King, and what of others, the Ancestor was seised off, the day of his death, who is his next Heir, and of what Age.

XV. The *Diem clausit extremum* is to be sued within the year after his death.

XVI. The *Mandamus* is after the year; and here, it must further be enquired, who took the profits.

XVII. The *Devenerunt* is, when the Ancestor died in ward to the King.

XVIII. Upon defect in Offices found by virtue of such Writs or Commissions, these Writs following shall issue out to make them perfect, *viz.*

XIX. A *Quæ plura*, upon leaving of any Land out in these Offices.

XX. A *Melius inquirendum*, upon any other defect in the Office.

XXI. A *Datum est nobis intelligi*, upon an Office finding lands to be holden of any other person, when there is a Record to prove, that they are holden of the King.

XXII. The Writs for having the Lands out of the Kings hands, are an *Ætate probanda*, and a Writ of *Livery*.

XXIII. An *Ætate probanda*, is to enquire whether he be of full age, or not.

XXIV. A Writ of *Livery* is after a perfect Office, finding a Tenure in chief; to have all the Lands delivered to him at once by the King.

XXV. Two being found Heirs by one and the same Title, the King shall not make Livery, until by enterpleader the truth be discussed at his full age, that was found Heir first.

XXVI. Amongst Co-partners, the King upon Livery shall make partition.

XXVII. He that holdeth of the King by Knight-Service, but not in Chief, shall not sue Livery. But when he cometh to his full age, shall have an *Ouster le main*.

XXVIII. A presentment is an enquiry finding some offence

offence againſt the King, which is alſo called an Indictment.

XXIX. Every ſtrong ſuſpition of ſuch offence appearing of Record hath the force of an Indictment.

XXX. Without an Indictment the King can have no Suit upon a wrong done, principally to another, but done to himſelf, he may.

XXXI. For the preventing of divers offences, *viz.* Treſpaſſes to the Body and Felonies, and committing them that offend to priſon, until they may be indicted, and ſo duely puniſhed, every Hundred hath his High Conſtable, and every ſeveral Tithing within the Hundred, hath his petty Conſtables or Headboroughs.

XXXII. Any man ſuſpecting another of a Felony committed, or but intended, may arreſt him.

XXXIII. With Indictments of Treſpaſs, informations of Penal Statutes (ſuch as inflict a Pecuniary mulct, or other Penalty upon Offenders) have a near affinity.

XXXIV. Indictments of the death of a Man, are to be taken before the Coroners.

CHAP. XXXVII.

I. HItherto of the firſt matter of the Suit; it followeth to ſpeak of Original Proceſs.

II. Original Proceſs is, that Proceſs which is until the Defendant do appear.

III. Original Proceſs is proper or improper.

IV. Proper, which is to bring ſome matter into Plea, or ſolemn Action; and it is ſingle or mixt.

V. Single, which is by the poſſeſſions onely (Lands or Goods) or onely by the Perſon.

VI. That by the Land is of two ſorts; firſt, ſummons and Grand *Cape* in a real *Practipe quod reddat.*

VII. The Summons is the Warning of the Tenant in his

XV. The *Diem clauſit extremum* is to be ſued within the year after his death.

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XX. A *Melius inquirendum*, upon any other defect in the Office.

XXI. A *Datum eſt nobis intelligi*, upon an Office finding lands to be holden of any other perſon, when there is a Record to prove, that they are holden of the King.

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VII. The Summons is the Warning of the Tenant in his

his land by certain Summoners.

VIII. The Summons upon an Action brought againſt one as Heir, muſt be in the land that did deſcend.

IX. If it be to recover the free-hold of land it ſelf, it muſt be in the ſame land.

X. A Grand *Cape*, is to take the land into the Kings hands by the view of lawful men, with a Summons of the Tenant to anſwer, as well to his default, as to the demandants Action.

XI. If the Tenant be returned, ſummoned, where indeed he was not, the Writ ſhall abate.

XII. Secondly, it is Summons and Re-ſummons, in a Mordanceſter, *Furis utrum*, and an Aſſize of *Darrein* preſentment, and upon default the Enqueſt awarded.

XIII. Original Proceſs by the goods, as in Aſſizes of *novel diſſeiſin*, and Nuſance, where the Original Proceſs is, *Pone per vadios & ſalvos plegios*.

XIV. A *Pone per vadios, & ſalvos plegios*, is a Proceſs to attach the Defendant by certain of his proper goods, being meer perſonal Chattels, which he ſhall forfeit, if he appear not, and upon ſuch default the Inqueſt (ſummoned by the Writ) is preſently to be awarded to recognize the Aſſize.

XV. The Original Proceſs by the perſon is a *Capias*, (which is a Proceſs to impriſon him) then an *exigent* or ſolemn demand at five ſeveral County Courts immediately following one another; and for not appearing, *Outlawry*.

XVI. This Judgment of Outlawry is given by the Coroner in the fifth County, and is onely in Mayhem, Felony, and Treaſon.

XVII. If the *Exigent* be returned not fully ſerved without any folly in the Plaintiff, he bringing an *Exigent de novo*, before any other County holden, ſhall have the benefit of the former Counties.

XVIII. Outlawry diſableth him from ſuing any Action.

XIX. *By*

XIX. *By Outlawry all his Chattels are forfeit to the King, even ſuch as he hath but a right unto.*

XX. In Mayhem there muſt be three *Capias*, (*viz. Capias, Alias, & pluries*) two in Felony, (*viz.* Stealth, Robbery, and Burglary) and onely one in the death of a Man and High Treaſon.

XXI. In Felony and Treaſon, they that tarry the Exigent forfeit their Chattels.

XXII. A mixt Original Proceſs is that which is ſo by his Goods, as for want of Goods, reſort may be made, ſometimes to his land, and ſometimes to his perſon, and ſometimes to both.

XXIII. Thoſe of the firſt ſort are in all other real Actions, and in all perſonal Actions (except Treſpaſs and Offences againſt the Publique) and in all *Juſtices, Summons* by the Goods, *Attachment*, (or a *Pone per vadios*, &c.) and a *diſtreſs* infinite.

XXIV. Diſtreſs Infinite is a Proceſs to diſtrain him continually after, till he do appear by certain of his goods and profit (or iſſues) of his lands, which he loſeth if he appear not.

XXV. Upon this diſtreſs muſt be returned in Iſſues, the value of all his lands from the *Teſte* of the Writ, until the day of the Return.

XXVI. With theſe Iſſues the land is chargeable.

XXVII. In ſuch proceſs as theſe, if the Defendant be a Beneficed Clerk, he muſt be warned by his perſon or land, if he have any Lay-Fee; otherwiſe proceſs ſhall go out to the Ordinary to make him appear by the Iſſues of his Benefice.

XXVIII. Here alſo, if upon the Summons a *nihil* be returned, *viz.* that the party hath nothing whereby to be ſummoned; in ſuch caſe there ſhall iſſue forth a continual *Capias*.

XXIX. But a *Capias* lieth not here againſt a Peer of the Realm, becauſe by common intendment he muſt have free-hold.

XXX. In

XXX. In a Replevin in the County Court, if the goods be conveyed away, so as at the Tenants Suit they cannot be restored, process of *Witherman* lieth, which is for the Plaintiff to have of the other goods, until restitution of his own.

XXXI. Those of the second sort are, in all Trespasses upon the Case, and in all offences in the nature of Trespasses upon the Case, an *Attachment*, *distresse* infinite, and upon *nihil* returned a continual *Capias*, as before.

XXXII. Here for contempts a *Capias* lieth against Peers of the Realm.

XXXIII. Those of a third sort are, in Trespas *vi*, and offences against the publique; *Attachment*, *distress* infinite, and upon *nihil* returned, three *Capias*, *Exigent*, and *Outlawry*.

CHAP. XXXVIII.

I. THus far of proper Original Writs, which begin an Action, besides which there are certain other Originals out of the Chancery, which are not deductory to bring any matter into Plea or solemn Action, but onely commandatory or prohibitory to do, or to leave something undone.

II. Upon these Writs no Process lieth, and therefore they may be termed *Improper* Originals.

III. The Commandatory Writs of this nature are these that follow.

IV. *De Dote assignanda*, which is for the Wife of the Kings Tenant, when the King is entitled, by office to Land, whereof she is dowable.

V. This Writ is always directed to the Escheator, and may be either to deliver her such part of her Land, as is already assigned to her in the Chancery for her Dower, or for the Escheator himself to assign her part unto her.

VI. If

VI. If her Husband held in chief, then she must first take an Oath in the Chancery not to marry without the Kings License.

VII. *De Homagio capiendo*, which is for the Tenant by Homage Ancestrel to compel the Lord to receive his Homage.

VIII. *De Scutagio habendo*, for the Lord to have Escuage of his Tenants by Knights-Service, when the same is due upon a Voyage Royal, *&c.*

IX. *De auxilio ad filium suum militem faciendum, & filiam maritandam*, for the Lord to have such aid of his Tenants where it is due.

X. *De Corodio habendo*, to have a Corodie for his Servant.

XI. *De annua pensione habenda*, to have a pension granted to his Chaplain, until he be promoted to a Benefice.

XII. *De libertatibus allocandis*, for one single person or Body Corporate impleaded before the Kings Justices, to have the liberties formerly granted unto them, to be allowed.

XIII. *De executione iudicii*, to have a Judgment executed: And this is a *Fusticies*.

XIV. *De restitutione temporalium*, where the Temporalties before seized into the Kings hands are to be restored to a Prior or Bishop elect and consecrate.

XV. *De securitate pacis*, for him that is in fear of corporal hurt, or of the burning of his Houses, to be secured of peace in that behalf, against the party, whom he feareth, where a corporal Oath must be taken by him, that standeth so in fear.

XVI. *De vi laica removenda*, to remove all Lay-force in any Church.

XVII. Of cleansing Streets, to have the ways, streets, and lanes of a Town Corporate to be made clean, when they be apt to cause infection by their nastiness and stench.

XVIII. *De*

XVIII. *De leproſo amovendo*, to remove a Leper or Lazer (that will come abroad) from the company of men to ſome ſolitary place of abode.

XIX. *De excommunicato capiendo*, upon a *ſignificavit*, *viz.* the Ordinaries Certificate into the Chancery, that one excommunicate ſtandeth out 40 days, to impriſon him, until he ſatisfie the Holy Church: And this Writ alſo is a *Juſticies*.

XX. *De excommunicato deliberando*, to deliver him out of priſon when the Church is ſatisfied.

XXI. *De cautione admittenda*, when one taken by an *excommunicato capiendo* offereth ſufficient pledge or caution to obey Holy Church, which is refuſed, to have that caution admitted, and to be delivered.

XXII. *De Hæretico comburendo*, to cauſe one convicted for an Heretique to be burnt.

XXIII. *De Coronatore eligendo*, to chooſe a Coroner in full County by the Free-holders of the County.

XXIV. *De Coronatore exonerando*, to diſcharge a Coroner of his Office upon juſt cauſe.

XXV. This Writ is directed to the Coroner himſelf.

XXVI. *De electione Viridariorum Foreſtæ*, to chuſe a Verdor of the Foreſt.

XXVII. *De exonerando Viridario Foreſtæ*, to diſcharge a Verdor of the Forreſt.

XXVIII. *Congé d' eſlire*, to Dean and Chapter (or ſuch like) to chuſe their Biſhop.

XXIX. A Writ for the Royal Aſſent to ſignifie to the Ordinary his Aſſent to the Election of an Abbot, &c. and to will him to execute that which belongeth unto him.

XXX. This is always directed to the Ordinary himſelf.

XXXI. *De ſecuritate inveniendâ, quod non ſe divertat in partes exteras ſine licentia Regis*, to compel one to find ſufficient

ſufficient mainpernors in a reaſonable ſum of Money, not to go into Forain parts without the Kings Licenſe, nor any there to attempt in contempt or prejudice of the King, or hurt of the People; nor to ſend any thither for any ſuch cauſe.

XXXII. All *Dedimus poteſtatems*, the principal of which are theſe that follow.

XXXIII. *Dedimus poteſtatem*, to give the Kings Royal Aſſent to the Election of an Abbot, or the like, made or to be made, and to ſignifie ſo much by his Letters to the Ordinary, that he may do that which belongeth to him, and to receive fealty, *&c.* Commanding the party to do the premiſes.

XXXIV. *Dedimus poteſtatem de fine levando*, to certain perſons to take the acknowledgment of a Fine out of Court, when one that hath agreed in the Kings Court to levy a Fine, is ſo feeble that he cannot travel.

XXXV. The Chief Juſtice of the Common Pleas may take the acknowledgment of a Fine without any *dedimus poteſtatem*.

XXXVI. *Dedimus poteſtatem de Atturnato faciendo*, for the Judges to admit an Atturney for one in a ſuit.

CHAP. XXXIX.

I. PRohibitory improper Original Writs are thoſe that follow.

II. A protection *cum clauſula nolumus*, to free ones poſſeſſions, that nothing be taken againſt his will for the Kings buſineſs.

III. Parſons, or other ſpiritual perſons not to be charged to the payment of Fifteens for goods in their poſſeſſions, annexed to their Churches.

IV. *Quod Clerici non eligantur in Officium Balivi*, for a Clerk not to be choſen an Officer for his Lands.

V. A prohibition to forbid Tenant in Dower, or by courteſie of *England*, or Guardian by Knight-ſervice, or in ſoccage to commit waſte to the deſtruction of the Inheritance.

VI. A *Quo minus*, for grantee of Eſtovers, to reſtrain the Grantor from committing waſte, ſo as he cannot have his Eſtovers.

VII. *De exoneratione ſectæ*, for Tenants by Suit of Court or other Services, that they be not diſtreined to do the ſame for ſuch time, as they ought to hold the Land diſcharged.

VIII. *De exonerando pro rata*, to diſcharge the Tenant of parcel of the Land, according to the rate of his Land, when he is lawfully diſtreined for all the Rent and Services.

IX. *De eſſendo quieto, de Tholonio*, to Officers not to grieve Spiritual Perſons, and others that ought to be quit of paying of Toll, Murage, Pannage, Pontage, &c.

X. *De non ponendo in Juratis*, to diſcharge Peers of the Realm, and other perſons priviledged, from being of Juries, unleſs their preſence be for any ſpecial cauſe neceſſary.

XI. *Ne exeas regnum*, to the party himſelf to inhibit him from going into Forein Parts without the Kings Licenſe.

CHAP. XL.

I. THus far the beginning of a Suit: The Proceeding follows, which hath two parts: The Count, and the Pleading.

II. The Count is a larger Declaration of the ſubſtance of the Original Writ, and therefore is uſually termed a *Declaration*.

III. In real Actions, which are in the right, the Demandant

mandant muſt alledge the taking of the profits, called *Eſplees*, in the Declaration.

VI. Inſtead of the Count a Plaint ſhall be made in Aſſizes of Novel diſſeiſin, and in Writs of Dower a Demand.

V. Pleading is the parties debating of the ſuit.

VI. Every plea muſt be offered to be proved true, by ſaying in the Plea, *Et hoc paratus eſt verificare*, and this is termed an *Averment*.

VII. An advantage of a matter, which cannot be pleaded, ſhall be ſaved by proteſting, not acknowledging it to be true, although the matter pleaded paſs againſt him.

VIII. Pleas are either of the Defendant, when he is firſt brought in to anſwer, or the mutual pleas of both.

IX. In a Joynt Action againſt two or more, one of them appearing ſhall not anſwer, till the other come in to anſwer, or the Suit be finiſhed againſt him, as by death, outlawry, *&c.*

X. An Action by or againſt an Infant, as Heir, ſhall not proceed, till his full age, unleſs it be apparent, that by proceeding he cannot be prejudiced.

XI. But in a Writ of Dower, an Infant Heir ſhall not have his Age.

XII. The Defendants firſt Pleas are Dilatory, or to the Action.

XIII. Dilatory, which are before any Plea in Bar.

XIV. When an Action is brought againſt many, they muſt joyn in the Plea, if they intend to plead theſe Dilatories.

XV. Dilatory Pleas are Exceptions, or forein advantages.

XVI. Exceptions are Dilatories grounded upon the matter it ſelf of the Suit; and are in diſability or abatement.

XVII. Thoſe in diſability are to the Juriſdiction or Perſon, both which muſt be before the Count.

XVIII. To the Juriſdiction, when it is alledged, that the Court ought not to hold plea of it.

XIX. To the Perſon, when it is alledged, that the Plaintiff ought not to be anſwered, as if he be outlawed, excommunicated, *&c.*

XX. But in caſe of Excommunication the ſuit ſhall be put without day, onely till he be abſolved.

XXI. Thoſe in Abatement are for any fault in the firſt matter of the Suit.

XXII. For this cauſe the Defendant may have *Oyer* of any thing tendred by the Plaintiff, and not being parcel of the Record, as of the Writ, Condition, *&c.*

XXIII. Pleas in abatement are to the Count firſt, and then to the Writ.

XXIV. Amongſt Pleas to the Writ, exceptions that ariſe upon the view of the Writ are to be pleaded before thoſe that are forein, as Non-Tenure, ſeveral Tenancy, *&c.*

XXV. Pleas to the Count, are for inſufficiency, variance from the Writ, *&c.*

XXVI. Pleas to the Writ, are for default of Form, falſe Latine, *&c.*

XXVII. By waging of Law for non-ſummons in a *præcipe quod reddat*, the Writ ſhall abate.

XXVIII. In Aſſizes of Novel diſſeiſin and nuſance, and in appeals of Felony, and *Furis utrum*, the Defendant may have many pleas in Abatement.

XXIX. The Writ abating for ſome cauſe, that cannot be imputed to the Plaintiffs folly, himſelf bringing another with ſpeed in the ſame Court againſt the ſame party, ſhall have all advantages of the former; and this is called a Writ purchaſed by *Fourneys Accompts*.

XXX. Forein advantages are delays without exception to any thing; as in all Actions, *Oyer* of the Writ,

Writ, &c. In real Actions, View, Aid Prayer, and Voucher.

XXXI. View, is (in real Actions) for the thing demanded, or of the land, whence it commeth, when it is ſo neceſſary, as without view the Defendant cannot well anſwer.

XXXII. Aid Prayer is for the Tenant for life, to requeſt him that hath the Inheritance, to help him to plead: So muſt the Incumbent pray in aid of the Patron and Ordinary.

XXXIII. Voucher is the calling in of one that ſhould warrant, to anſwer the Action.

XXXIV. Here the Voucher loſing, the Tenant ſhall recover in value againſt him any Hereditaments, that he had at the time of the Voucher.

XXXV. Therefore Voucher is in liew of another Action, where the Original Proceſs is *Summons ad warrantizandum*, and then a Grand *Cape ad valentiam*.

XXXVI. If one be vouched within age, it is a *Summons ad habendum viſum* firſt, and being awarded of full age, a Summons *ad warrantizandum*, and Grand *Cape*, as before.

XXXVII. But if he be awarded within age, the *parol* ſhall *demur* until his full age.

XXXVIII. If the Summons *ad warrantizandum* or *habendum viſum* be not ſerved, then a *ſequatur ſub ſuo periculo* is to go forth, and if the Tenant cannot get that ſerved, he loſeth his Warranty; for it is *ſub periculo* of the Tenant.

XXXIX. But in exchanges the Hereditaments are liable from the very time of the Exchange.

XL. In partition amongſt Co-partners from the death of their Anceſtor.

XLI. *The King ſhall not be vouched but prayed in aid off, within that caſe hath the force of a Voucher.*

XLII. So it is alſo of Co-partners.

XLIII. In an Aſſize of Novel Diſſeiſin and Nuſance Voucher lieth not, unleſs the Vouchee be preſent in Court, and will by and by enter into warrantie.

XLIV. He that is impleaded in any Action, wherein he may vouch and doth not, ſhall never have the benefit of a *Warrantia Cartæ*.

XLV. Advantages in certain perſonal Actions are Garniſhment and Enterpleader.

XLVI. Garniſhment is upon a Writ of Detinue, when it being alledged by the Defendant to have been upon a Bailment by the Plaintiff and another, or for another upon condition, that other ſhall be brought in to ſhew whether by reaſon of that Bailment himſelf or the Plaintiff ought to have the Goods, Charters, &c.

XLVII. Enterpleader is, when divers bringing ſeveral Writs of Detinue, Ward, or *Quare impedit* againſt the ſame perſon in the ſame County, and for the ſame thing, the reſt ſhall anſwer him, that brought the firſt Writ.

XLVIII. *The King may appoint any place he thinketh good to be a Safeguard for all Offenders flying thither, that they ſhall not be moleſted, or compelled to anſwer, which priviledged places have in former times been called Sanctuaries.*

XLIX. Thus far of Dilatory Pleas, pleas to the Action are ſuch as go to the Body of the Matter, and are Pleas in Bar or Confeſſions.

L. Pleas in Bar, are thoſe, which are to Bar the Plaintiff of his Action.

LI. In theſe the Defendant muſt make defence, as to ſay, *defendit vim & injuriam quando*, &c.

LII. But no ſuch Defence ſhall be made in Dower, Aſſize of Novel Diſſeiſin, *per quæ ſervitia*, or Attaint.

LIII. The Tenant may plead a Warrantie in Bar of him that ſhould warrant, if he bring the Writ.

LIV. And

LIV. And though the Tenant of the Land be a ſtranger to the Warrantie, yet he may plead that he hath a third perſons Eſtate, and ſo rebut by a Warrantie made unto that perſon.

LV. But in Writs of Dower the Anceſtors Warrantie is no Bar.

LVI. A Warrantie made by the Diſſeiſor at the time of the Diſſeiſin, barreth not the Heir, and this is called a Warrantie that commenceth by diſſeiſin.

LVII. In an Aſſize of Novel Diſſeiſin and Treſpaſs, the Defendant pleading a Title in Bar, muſt give colour of Title to the Plaintiff.

LVIII. In the giving of this Colour, theſe three things muſt be obſerved. 1. It muſt be to the Plaintiff, not to a Stranger, or to the Defendant. 2. It muſt be of ſuch a poſſeſſion, whereby he may maintain his Action. 3. The Colour muſt be a matter doubtful in law, or otherwiſe difficult to the Lay-people.

LIX. In real Actions for the meer Right, when it is in reſpect of a Diſſeiſin done, the Tenant cannot traverſe the Seiſin, but may tender half a Mark to the King, to have it inquired by the Jury: And being found, that the Demandant was not ſeiſed in the time, whereof he counteth, that ſhall bar him for ever.

LX. *The Tenant cannot tender half a Mark againſt the King.*

LXI. The Heir or Executors in an Action brought againſt them (where they are chargeable) pleading a matter in their own knowledge, which goeth in perpetual bar, ſhall be charged as in their proper duty, if it paſs againſt them.

LXII. In Aſſizes of Novel Diſſeiſin, Nuſance, Mort-dancestor, *Furis utrum*, and in Indictments and Appeals of Felouy, the Defendant may plead in abatement, and over in Bar, or take the general Iſſue alſo.

LXIII. In Aſſizes of Novel Diſſeiſin and Nuſance,

he may plead a ſpecial matter, that amounted but to a general iſſue.

LXIV. Upon Indictments of Felony and Treaſon, the Defendant being put to anſwer, is not allowed Counſil, if he deny the Fact.

LXV. A preſentment in the Leet or Sheriffs turn, after the day of the preſentment bindeth the party for ever, and is not traverſable but in caſes that touch ones Free-hold.

LXVI. Therefore the courſe is, to remove ſuch preſentments into the Kings Bench by a *Certiorari*, where they may be traverſed.

LXVII. Confeſſion is, when the Defendant confeſſeth the Plaintiffs Action to be good.

LXVIII. The Defendant confeſſing an Indictment of Felony may accuſe others of the ſame Offence.

LXIX. One that flieth to a Church or Church-yard, and confeſſeth before the Coroner, when he commeth, the certainty of any bare Felony, where life and member is to be loſt, before he be thereof attainted, may abjure.

LXX. Abjuration, is his Oath before the Coroner himſelf to depart the Realm for ever at the time and place ſet him; going the direct way thither; tarrying there but one Floud and Ebb, if he can have paſſage: and till he can ſo paſs, going every day into the Sea up to the knees to aſſay if he may paſs over; and if he cannot paſs within 40 days, then to put himſelf again into the Church, as a Felon, *&c.*

CHAP. XLI.

I. THus far the Pleas of the Defendant, the mutual pleas of both, are the debating before iſſue, or the Iſſue it ſelf.

II. Debating before Iſſue, is the diſcuſſing of the material

material things to draw it to ſome one iſſue.

III. Of the firſt ſort, are Replication, Rejoynder, Sur-Rejoynder, *&c.*

IV. In an Aſſize againſt many, if each take the whole Tenancy ſeverally, and plead ſeveral matters in Bar, or one *Nul-tort*, and the other in Bar, the Plaintiff at his peril muſt chooſe his Tenant. And then after iſſue for the whole, the Tenancy ſhall be firſt inquired of, and being found for the Plaintiff, then the other iſſue ſhall be enquired; but being found againſt him, and no Title made againſt the Tenant indeed, the Writ ſhall abate.

V. In an Action of Treſpaſs meer tranſitory, although the Defendant juſtifie by any ſpecial matter, yet the Plaintiff may take Iſſue, that it was done *de ſon tort demeſne, viz.* wrongfully by the Defendant without anſwering to the matter.

VI. If it be a Treſpaſs upon Land, the Defendant juſtifying in ſome other Land than the Plaintiff meaneth, the Plaintiff may make a new Aſſignment.

VII. An Iſſue is, when both the parties joyn upon ſomewhat, that they refer to a Trial to make an end of the Plea.

VIII. This Iſſue is of the Fact, or of the Law.

IX. Of the Fact, when the proper contradiction of that, which one alledgeth, is ſet down by the other.

X. After which, if any ſufficient pleading appear in the Record, whether the Iſſue be joyned thereupon (which is called a *Feofaile*) or no, the parties muſt begin anew, where the firſt defect was.

XI. But no Re-pleader ſhall be in an Aſſize, if the Plaintiff have diſcloſed a ſufficient Title.

XII. If the tender of this Iſſue come on the Plaintiffs part, the form is, *Et hoc petit, quod Inquiratur per recordum* or *Patriam*, &c.

XIII. If on the Defendants part, then it is, *Et de hoc*

ponit ſe ſuper recordum illud, or *ſuper Patriam*.

XIV. Iſſue in a Writ of Right cannot be joyned upon the meer Right, but by the party himſelf, and this is called the joyning of the *miſe*.

XV. Where the Plaintiff in his Replication maketh Title at large, the Tenant may joyn Iſſue upon the Title, by ſaying, *Veigne Aſſize ſur le title*, and this is called a *pleading to the Action at large*.

XVI. But in a perſonal Action, when the Title of the Land cometh in queſtion, it lieth not till Iſſue joyned, and yet in that caſe it never lieth for the Tenant for life, but onely for Tenant for years, Bailiff, &c.

XVII. *Aid in theſe Actions ſhall be of the King before Iſſue joyned onely*.

XVIII. This being a matter (*in fait*, *viz.*) done in the County, is triable by the Oath of twelve free and lawful men of the ſame County indifferently choſen.

XIX. Four of the Jury muſt be of the ſame Hundred.

XX. If the thing in iſſue lie in the notice of two ſeveral Counties, and not of one onely, the Jury ſhall be made equal out of both.

XXI. But upon an Indictment of an offence againſt the Crown, the trial ſhall never be by Joynder of Counties.

XXII. But if the Defendant plead in any Action, that the Plaintiff is a Villein regardant to a Mannor of his in another County, yet the ſame ſhall be tried in the County where the Writ is brought.

XXIII. Where a Peer of the Realm is party to the Action, a Knight muſt be returned upon the Jury.

XXIV. In a Court of Pipowders, the Trial is by the Merchants.

XXV. The Jury in a Writ of Right is called the Grand Aſſize, being four Knights (or others in default of Knights) chuſing of twelve unto them.

XXVI. This Jury is called the *Grand Aſſize*, becauſe it always conſiſteth of more than 12, *viz.* of 16.

XXVII. Upon

XXVII. Upon Trial by Jury challenges are allowed for the parties (if they will) both to the *Array* and to the *Polls*, and are to be tried by ſome of the Jurors.

XXVIII. If it be before any Jurors ſworn the Court ſhall chuſe Triers, but when any of the Jurors are ſworn, they muſt try it.

XXIX. Challenge to the *Array*, is when the Jury is not ſufficiently empannelled.

XXX. Upon juſt cauſe of exception to the Sheriff, and afterwards to the Coroner, the Court ſhall chuſe certain perſons to return the Jury, who are called *Eſſiors*.

XXXI. And then the parties ſhall never afterwards make any Challenge to the *Array*.

XXXII. Challenge to the *Poll*, is when any of the Jurors are not fit to paſſe upon the Trial.

XXXIII. This Challenge muſt be taken before the Panel be peruſed, and ſhall be tried by two of the Jurors choſen by the Court.

XXXIV. But Challenges that ſound not in reproach of the Juror ſhall be examined upon his Oath, which is called Examination upon *Voire dire*.

XXXV. He that challengeth the *Array*, if it paſs againſt him, (or that he releaſe it) ſhall never challenge the *Polls*, without ſhewing cauſe preſently, which ſhall be tried out of hand.

XXXVI. After challenge to a Juror for one cauſe, which paſſeth againſt the Challenger, he ſhall not challenge him for another.

XXXVII. In Indictments and Appeals of Felony, the Defendant may challenge thirty five Jurors without ſhewing cauſe, and this is called a *Peremptory* Challenge.

XXXVIII. When there lacketh ſome to fill the Jury, others of the ſame ſort ſhall be taken, till it be full, and they are called a *Tales*.

XXXIX. The *Tales* muſt be an even number, and leſs

leſs than the principal Pannel, as *Decem Tales*, *Octo Tales*, &c.

XL. Every *Tales* muſt be of a leſs number than the other, as after an *Octavo Tales*, as *Sex Tales*, &c,

XLI. But in Indictments and Appeals, that touch life, as *Tales* may be of a greater number than the principal pannel.

XLII. The Jury being charged, may neither eat nor drink (but by leave of the Juſtices) before their Verdict given.

XLIII. Doing ſo before they be agreed, it maketh their Verdict void, but after they are agreed, it is only fineable.

XLIV. The Jury upon Arraignment quitting one that was found guilty upon the death of a man upon an enquiry before the Coroners *ſuper viſum corporis*, muſt find who did the Fact.

XLV. The Jury in an Aſſize of Novel Diſſeiſin ſhall enquire of the Plea in Abatement,

XLVI. And therefore in ſuch an Aſſize no Plea in Abatement is anſwerable.

XLVII. An Infant bringing an Aſſize, if a matter done in the ſame County be pleaded againſt him, the Jury ſhall inquire of all the Circumſtances.

XLVIII. The like enquiry of the Circumſtances ſhall be, if in an Aſſize brought againſt him, he plead to the Aſſize at large.

XLIX. If the Tenant in a *Mortdanceſter* traverſe any point of the Writ, yet the Jury ſhall enquire of all the Points, and any one found againſt the Demandant, abateth the Writ.

L. For the better direction of the Jury in their Verdict, greater liberty is permitted in pleading a matter doubtful in Law.

LI. For ſometimes a Traverſe may be omitted.

LII. Sometimes alſo, the ſpecial matter may be pleaded

pleaded together with the General Iſſue.

LIII. Likewiſe the Count may be abridged before Verdict, ſo as the Original remain true.

LIV. After acquittal upon an Appeal or Indictment of Felony or Treaſon, he ſhall never be drawn in queſtion for the ſame offence again.

LV. In Writs of Right and in Appeals, that touch life, Trial may be by Battail at the Defendants choice.

LVI. The Battail in a Writ of Right muſt be by Champions, who muſt be Freemen.

LVII. Here, the Demandants Champion muſt have ſeen him or his Anceſtors in poſſeſſion, and thereof take his Oath.

LVIII. The Battail in an Appeal muſt be in proper perſon; and therefore here the Defendant is reſtrained from the choice of Battail (and muſt needs try it by Jury) if there be any notorious preſumption of the Fact in him, or imbecillity in the Plaintiff: Alſo againſt a Peer of the Realm bringing an Appeal, the Defendant ſhall not wage Battail.

LIX. In a Writ of Dower, Iſſue taken upon the death of her Husband, ſhall be tried by Witneſſes.

LX. In ſome caſes alſo the Trial ſhall be by the Defendants Oath, As 1. Where the Tenant in a *Præcipe quod reddat* alledgeth, that he was not lawfully ſummoned according to the Law of the Land. 2. In meer perſonal Contracts growing without Deed, or privity of others, the Defendant may wage his Law.

LXI. Therefore in ſuch kind of Actions Executors are not chargeable.

LXII. *No Wager of Law ſhall be againſt the King.*

LXIII. But Wager of Law may be upon Plaints in Court Barons for perſonal things under forty Shillings.

LXIV. An Iſſue of Law (termed a *Demurrer*) is, when admitting the matters alledged, either of them reſteth

reſteth in the Judgment of the Court.

LXV. The *Demurrer* being joyned upon an exception to the Original it ſelf, or Count for ſome fault appearing in them, doth onely drive the Defendant to make a better anſwer (which is called a *reſpondes ouſter*) if it paſs againſt him.

CHAP. XLII.

I. THus far concerning Pleading; the other mean Acts are Appearance and Continuance, or Judicial Proceſs.

II. Appearance, is the parties comming into the Court; where upon common day given, the fourth day after the very day is allowed.

III. When the Defendant appears not, as he ought, he is ſaid to make default.

IV. When the party for not appearing ſhould have ſome great loſs or corporal pain, he may appear, though the Officers Return force him not to it.

V. If the Plaintiff will not appear, when he is demanded at the day, (which is termed a *Non-ſuit*) or ſay in Court; that he will not ſue forwards, (which is a *retraxit*) this is Peremptory, and loſeth him his Action.

VI. But in real Actions brought by many, if one will not proſecute, the reſt may alone; except in a Writ *de nativo habendo*, and that is *in favorem libertatis*.

VII. For Executors alſo ſummons and ſeverance lieth in perſonal Actions.

VIII. If the Defendant will not plead (which is called a *Nihil dicit*) this in all Actions is peremptory, and loſeth the Action.

IX. So in perſonal Actions, if he appear, and after Plea or Demurrer joyned make default; this is alſo peremptory, and imports a *Nihil dicit*.

X. How-

X. Howbeit, either of the parties may for once be excuſed of appearance, if they demand it the firſt day or any of the four days, unleſs the other enter an exception, that no Eſſoin be received.

XI. Alſo upon every mean appearance a new Eſſoin lieth.

XII. And this is called an Eſſoin *de mal venir*, or the common Eſſoin.

XIII. Beſides this Eſſoin, there are divers others for ſpecial cauſes allowed, as of being beyond Sea, of going *ad terram ſanctam*, of the Kings Service, and *de malo lecti*.

XIV. Theſe laſt have a year and a days adjournment, whereupon an oath muſt be taken that the Cauſe is true.

XV. But no ſuch ſpecial Eſſoin lieth in an Aſſize of novel Diſſeiſin, Dower, Aſſize, of *Darrein preſentment*, and *Quare impedit*.

XVI. Continuance is from day to day till the end of the Suit.

XVII. Here, if the Plaintiff do nothing, it is called a *Diſcontinuance*.

XVIII. And if any error be in the continuing, as by awarding a *Capias*, where a diſtreſs ſhould be, is is called a *Miſcontinuance*.

XIX. The Suit of an excommunicate perſon ſhall be put without day, (termed *Parol Jans Four*) till he be abſolved.

XX. So it is alſo in all other Caſes, which happen without his Plaintiffs folly.

XXI. After continuance taken, the Defendant may for once leave his former plea, and plead any thing, growing ſince his later continuance.

XXII. Continuance is by proceſs, or upon the *Roll*.

XXIII. That upon the Roll is a *dies datus*, or Emparlance.

XXIV. *Dies*

XXIV. *Dies datus*, when the Court giveth the parties day, and this is always before the Count.

XXV. Such a continuance by aſſent of both the parties is called a *Prece partium*.

XXVI. But in Aſſizes the continuance is by a *Juſticiarii nondum aviſantur*, and not by a *Dies datus*.

XXVII. Imparlance is, when the Defendant demandeth day, to ſee if he may end the matter without further Suit, which he may do once, but not oftner without the Plaintiffs conſent, and this is always after the Count.

XXVIII. After Imparlance he cannot plead to the Jurisdiction or Perſon, neither yet in abatement either of the Count or Writ, nor demand *Oyer* of an Obligation, or the like.

XXIX. But after a ſpecial Imparlance, *Salvis omnibus advantagiis*, he may plead to the Count or Writ, and alſo have *Oyer*; but not to the Juriſdiction or Perſon.

XXX. In an Appeal that toucheth life, if the Defendant plead a plea, whereby his life ſhould come in Jeopardie, the Plaintiff ſhall not Imparle unto it, but muſt anſwer *ſedente curia*.

XXXI. Default after Imparlance is peremptory, and loſeth the Action in all Actions real and perſonal.

XXXI Judicial proceſs, is a Proceſs out of that Court, where the Original is returned, proſecuting the Action.

XXXIII. Judicial proceſs is Meſne proceſs, or in nature of new Originals.

XXXIV. Meſne proceſs, which is for any neceſſary Act to be done, not onely for the Plaintiff againſt the Defendant, but for either of them againſt any other, whoſe preſence in the Court may be neceſſary for them.

XXXV. Upon

XXXV. Upon a Fine levied, before it be engroſſed, the Writs to compel Attornment are,

XXXVI. *Per quæ ſervicia*, when the Fine is levied of a Seigniory.

XXXVII. *Quem redditum reddit*, when it is of a Rent charge or Rent ſeck.

XXXVIII. *Quid juris clamat*, when it is of a Remainder or Reverſion.

XXXIX. *In Petitions, or whereſoever the King (being made party) may be at loſs, a Writ of Search lieth, which is to ſearch in the Treaſury before the Plea proceed, if by likelihood ſome matter may be found there to maintain his Title.*

XL. In real *Præcipes*, where a Free-hold is to be recovered, upon default, after plea, iſſue, or *demurrer*, a *Petit Cape* ſhall go forth to cauſe the Tenant to anſwer to the default onely.

XLI. So upon a Voucher a *Petit Cape ad Valentiam.*

XLII. In ſuch as are for other Hereditaments (ſave in point of Seigniory) as Annuity, *Quare impedit, Quo jure, Quod permittat*, &c. upon default, as before, a diſtreſs ſhall go forth in liew of a *Petit cape.*

XLIII. The Proceſs againſt Jurors is a *venire facias* to the Sheriff to return them, at which day if they appear not, then a *habeas corpora*, and after that a diſtreſs infinite.

XLIV. In an Action of Treſpaſs (always) whatſoever the Iſſue be, *releaſe, juſtification*, &c. and in debt, detinue, account, and other perſonal Actions, which are for things in certain, if the Iſſue be taken upon matter in *fait* onely, and the Defendant make default, the Jury ſhall be taken.

XLV. But if it be upon matter in writing, the Plaintiff may there pray Judgment, if he will: Howbeit,

if

XXIV. *Dies datus*, when the Court giveth the parties day, and this is always before the Count.

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XLV. But if it be upon matter in writing, the Plaintiff may there pray Judgment, if he will: Howbeit,

if

if he do not pray it, the Jury ſhall be taken by default, as in an Action of Treſpaſs.

XLVI. But in Aſſizes of Novel Diſſeiſin, Nuſance, Mortdanceſtor, Darrein preſentment, and *Furis utrum*, the Original Writ commandeth a Jury, as well as the Defendant to be warned, which Summons to the Jury ſerveth inſtead of a *venire facias*, ſo that the Proceſs here againſt the Jury, is *Summons, Habeas corpora, & Liſtringas.*

XLVII. And therefore here, upon default after that Original Proceſs ended (*viz.* the Attachment in an Aſſive of Novel Diſſeiſin and Nuſance, and the Summons and re-Summons in a Mortdanceſtor, Darrein preſentment, and *Furis utrum)* the enqueſt ſhall be taken by default.

CHAP. XLVII.

I. THus far of Meſne Proceſs: Judicial Proceſs in the nature of new Originals (in none of which any freehold ſhall ever be recovered, but damages onely) are thoſe that follow; firſt, ſuch as command to do ſomething: As,

II. Re-ſummons, and Re-attachment, to receive in the former plight a Suit put without day.

III. Theſe may either revive the Original alone, or the whole proceeding by ſpecial Words.

IV. All certificatory Writs.

V. *Certiorari*, to remove a Record out of a Court of Record into the Chancery.

VI. Writs to remove Suits out of Court Barons.

VII. Theſe may be without ſhewing any cauſe in the Writ, if the remove be at the Plaintiffs Suit; but not without ſhewing good cauſe in the Writ, if it be at the Defendants Suit.

VIII. Theſe

VIII. These are to remove Pleas, by writ or by plaint.

IX. Of the first sort are *Tolt* and *Pone*.

X. *Tolt* or *Tollas* is for the Plaintiff to remove a Writ of Right out of the Lords Court into the County Court.

XI. A *Pone* is to remove into the Common Place in all other Cases.

XII. But a *Pone*, to remove a Replevin by Writ out of any other Court Baron, than the County Court cannot be without shewing cause.

XIII. Of the second sort are a *Recordare*, and *Accedas ad Curiam*, in both which nothing but the Plaint shall be removed.

XIV. A *Recordare* is to remove Plaints in the County Court.

XV. An *Accedas ad Curiam*, is to remove Plaints in any other Court Baron.

XVI. This also (upon good cause shewed in the Writ) lieth for the Tenant to remove the Plea in a Writ of right out of the Lords Court immediately into the Common Place.

XVII. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.

XVIII. But the Chancellor may send such a Record by his own hands (without any *Mittimus*) if he please.

XIX. A *Procedendo*, to proceed in Suits.

XX. Of this nature is a Writ of Consultation, to proceed in the Spiritual Court, when one, suing there for matters belonging to that Court, is restrained to prosecute the Suit.

XXI. A Writ of Mainprise, to set at liberty one bailable, finding Bail to answer the Action.

XXII. Such persons bailable be they which are taken upon a *Capias* Original.

XXIII. But not the Defendant in appeal of Mayhem, if the Mayhem be heinous; nor the principal in an Indictment or appeal of Felony; nor the Acceſſory after the attainder of the Principal; nor any in High Treaſon.

CHAP. XLIV.

I. A Writ of Recaption, for him, whoſe goods being diſtrained before for Rent or Services, are diſtrained again for the ſame thing; hanging the Plea in the County Court, or before the Juſtices.

II. A Writ *de magna Aſſiza eligenda* to the Sheriff, to ſummon four Knights to chuſe the Grand Aſſize, when the *Miſe* is joyned thereupon in a Writ of Right.

III. And this is a meer judicial Writ, iſſuing out of the Common Place, when the Plea hangeth there.

IV. A Certificate of Aſſize upon an imperfect verdict given in an Aſſize, to bring in the ſame Jurors to give a more perfect one.

V. A *Proprietate probanda* unto the Sheriff, to enquire whether the property be to the Plaintiff or Defendant, when upon a Replevin ſued, the Defendant claimeth property.

VI. And this alſo may be meer judicial, iſſuing out of the Kings Bench, or Common Place, and returnable there.

CHAP. XLV.

I. SEcondly, hither belong ſuch Writs, as are prohibitory, or reſtrain from doing ſomething, where the Prohibition it ſelf is in lieu of a Summons, and after that the Proceſs is an Attachment and Diſtreſs: of this ſort are

II. Prohibitions to reſtrain the party from ſuing in an inferiour Court, that ought not to hold plea of it.

III. Such a Prohibition is an *Indicavit* for the Defendants

dants Patron, when the right of Advowſon in any part of ones Tithes is in demand in a Spiritual Court, between two Clerks, claiming from ſeveral Patrons.

IV. A *Superſedeas*, to ſtay any further proceeding in a Suit.

V. Of this nature are, a Writ of Peace, for the Tenant upon a Writ of Right brought in the Lords Court, vouching one to warrantie out of the power of that Court, which is called a *Forein Voucher*, or joyning the *miſe* upon the grand Aſſize to have the matter reſpited, until the Juſtices in *Eyre* come thither, which Writ, if he bring not, after ſuch *Voucher* or *Miſe* joyned, he loſeth his Tenancy.

VI. *De libertate probanda*, for the Defendant upon a *Nativo habendo* in the County Court, claiming to be frank, to the Sheriff, to adjourn the Plea before the Juſtices in *Eyre*.

VII. *Identitate nominis*, for one moleſted by a Suit againſt another of the ſame name.

VIII. Protection *cum clauſula Volumus*, when the King (in reſpect of the Defendants being in his Service) taketh him into his Protection for one year to be free from all Suits.

IX. Therefore ſuch a Protection ſhall for that time ſave all defaults.

X. Howbeit, Writs of Dower, *Quare impedit*, Aſſizes of Novel Diſſeiſin, and Pleas before the Juſtices in *Eyre* are excepted.

XI. This kind of protection is double, *viz.* *Protectio quia profecturus*, when he is to go beyond Sea in the Kings Buſineſs.

XII. And *Protectio quia moratur*, when he ſtayeth there about it.

XIII. Of this nature alſo is a Protection *Quia in priſona*, when being ſent beyond Sea in the Kings Wars,

he is there taken and detained in prison.

XIV. *The King may take his Creditor into his Protection, that no other Creditor shall sue or arrest him, till the King be satisfied.*

XV. *He may also by a Writ called* Warrantia Dei, *(rehearsing that one which should appear in proper person, is in his service) will, that for one day, no default be recorded upon him.*

XVI. *Essoin de malo lecti,* which is a Writ to warrant an Essoin of lying sick a bed cast by the Tenant in a Writ of Right; commanding four Knights to see him; and if he be sick, to give him adjournment of a year and a day.

XVII. A *ne admittas*, for either party in a *Quare impedit*, or Assize of Darrein presentment, to the Ordinary, not to admit the others Clerk, till the matter be discussed.

XVIII. This Writ must be sued within six months otherwise the Ordinary may present by lapse.

XIX. A *Quare incumbravit*, for him that sueth a *Ne admittas*, and afterwards recovereth in a *Quare impedit*, against the Ordinary for incumbring the Church, contrary to the *Ne admittas*.

CHAP. XLVI.

I. THus far of Suit: Judgment is the Courts final determination of the Suit.

II. Upon Judgment against the King in a Petition, he is presently out of possession.

III. In a Writ of Right the Judgment after Issue joyned is final on either side.

IV. *Against the King Judgment is not final, but is always with a* Salvo jure Regis.

V. Recovery in a Writ of Right binds all Strangers, not

not claiming within a year.

VI. Tenant for life ſuffering a wrongful recovery, it ſhall not prejudice his Right, that hath the Inheritance, though he be prayed in aid to make default.

VII. For after the death of Tenant for life, he may falſifie it by Action, of *ad terminum qui preteriit*, or Writ of Right, which is called *falſifying* of a Recovery.

VIII. In a Writ of Dower by Feme Guardian in Soccage againſt Guardian by Knight-ſervice, ſhe ſhall at his prayer be adjudged to endow her ſelf wholly of the land in Soccage, and this is called Dower *de la plus beale*.

IX. A Debt acknowledged in a Court of Record either to the King, or a common perſon, is in the nature of a Judgment, and called a *Recognizance*.

X. In appeals of Mayhem, and Indictments or Appeals of Felony, the Acceſſory ſhall not be compelled to anſwer, till Attainder of all the Principals.

XI. He that is, or (by poſſibility) may be within Orders, namely, a Deacon at the leaſt, may have the benefit of his Clergy, if he be found culpable of any bare Felony, where life and member is to be loſt.

XII. This poſſibility (there being no other impediment) ſhall be tried by the Judges by his ableneſs to read a Verſe.

XIII. Clergy is the delivering of him to the Ordinary to be kept in priſon.

XIV. If it be before Judgment (in which caſe he is called a *Clerk convict*) he ſhall be tried there by a Jury of Clerks, and therefore purging himſelf ſhall go at large.

XV. Not purging himſelfe but being found culpable by thoſe Clerks, he ſhall be onely degraded.

XVI. But upon an Appeal no Purgation ſhall be allowed.

XVII. A Clerk convict ſhall anſwer to any Offence committed before.

XVIII. *A Clerk convict forfeiteth his Chattels.*

XIX. *Notice muſt be given to the King of the time, before the party make purgation.*

XX. If the Clergy be after Judgment (in which caſe he is called a *Clerk-attaint*) he ſhall remain in perpetual priſon.

XXI. Outlawry is a Judgment in it ſelf.

XXII. So is Abjuration.

XXIII. The Offender upon a Preſentment in a Leet or Sheriffs turn ſhall be amerced.

XXIV. The Defendant in an Appeal of Felony, being acquitted, ſhall have Judgment alſo to recover damages againſt the Plaintiff.

XXV. The Plaintiff recovering in a Suit ſhall be allowed his Coſts.

XXVI. Theſe Judgments have their Judicial Writs belonging to them, both meer Judicial Writs for the Execution of them, and new Originals in the nature of Judicial Writs, to undo ſome matters concerning Judgments.

XXVII. Meer Judicial Writs in real or perſonal Actions, are either ſuch as lie onely within the year and day after the Judgment rendred, or a *Scire facias.*

XXVIII. Thoſe of the firſt ſort are between the parties to the Recovery, and in the ſame Court where the Recovery was.

XXIX. Of this kind are upon Recovery in real and mixt Actions.

XXX. *Habere facias ſeiſinam,* to put him in poſſeſſion upon a a Free-hold recovered, in an Aſſize, *Præcipe quod reddat, &c.*

XXXI. A Writ to the Biſhop to admit ones Clerk upon a Preſentation recovered in a *Quare impedit,* or Aſſize of *Darrein preſentment.*

XXXII. Thoſe upon Recovery in perſonal Actions are

are of two ſorts, *viz.* to have Execution of his Poſſeſſions, or againſt his Body.

XXXIII. Execution of his Poſſeſſions, is either of his Lands, or Chattels, or both.

XXXIV. That of the land is either of the land it ſelf, or of profits out of the Land.

XXXV. Execution of the Land it ſelf is an *Habere facias poſſeſſionem*, upon a Term of years recovered in an *Ejectione firmæ*, &c.

XXXVI. Execution of his Chattels is a *Fieri facias*, to levy Execution of his Goods and Chattels onely.

XXXVII. Execution of his Land and Chattels, is a *Levari facias*, to levy execution of the profits of his Lands and Chattels.

XXXVIII. Here, Execution ſhall be of any land, which to party had the day of the Judgment rendered, but for chattels (though it be a Leaſe for years) onely thoſe, which he had the day of the Execution ſued.

XXXIX. But in Court Barons Execution is only by diſtreſs, and impounding till the party be ſatisfied.

XL. The King may have a *Diſtringas* to levy an Amerciament, or ſuch like, by diſtreſs and ſale, whether it be an Amerciament in the Leet or Sheriffs turn, or otherwiſe.

XLI. Execution againſt the Body is a *Capias ad ſatisfaciendum*, to take the Body in Execution for ſatisfying of the party.

XLII. This is onely (in a perſonal Action) where a *Capias* lay.

XLIII. Here an *Exigent* ſhall be awarded upon the firſt *Capias*.

XLIV. *Of this Nature are two ſpecial Writs by the Kings Prerogative*, Capias pro fine Regis, *and* Capias Utlagatum.

XLV. *Capias pro fine*, when the party is adjudged to pay a Fine to the King.

XLVI. *Capias Utlagatum*, to take one that is Outlawed.

XLVII. Theſe are the Judicial Writs within the year and day.

XLVIII. A *Scire facias*, is to warn the Defendant upon recovery in Real Actions, to ſhew cauſe why the Plaintiff ſhould not have Execution.

XLIX. Here, upon a *Nihil* returned, Execution ſhall be preſently againſt the Parties to the Judgment.

L. In caſe of life, the Judge may command Execution to be done without any Writ.

LI. A Woman quick with Child ſhall for once (and no more) be reſpited Execution.

LII. Here, the Trial ſhall be by a Jury of Women, and the Writ for it is called, A Writ *De Ventre inſpiciendo*.

CHAP. XLVII.

I. THe new Originals in the nature of Judicial writs to undo ſome matters concerning Judgments, are either writs grounded upon Errour, or an Attaint, and *Audita querela*.

II. Writs grounded upon Errour, are a writ of Errour and falſe Judgment.

III. Both theſe lie upon any Errour in the proceeding.

IV. But Errour in Proceſs may the ſame Term be reformed in the ſame Court.

V. The Proceſs here is a *Scire facias*.

VI. The Party bringing a writ to reverſe Errour in the Judgment, may have a *Super-ſedeas* to ſtay Execution,

Execution, till the Errour be diſcuſſed.

VII. A writ of Errour is upon an Errour in a Court of Record.

VIII. This may be ſued in the Kings Bench, or Parliament.

IX. In the Kings Bench, when the Errour is in the Common Place, or other inferiour Court of Record.

X. In the Parliament, when the Errour is in the Kings Bench; and this is returnable before the King and the Lords onely.

XI. A writ of falſe Judgment is upon an Errour in a baſe Court.

XII. An Attaint, is to enquire, whether a Jury of twelve men gave a falſe Verdict.

XIII. This muſt be brought in the life of him for whom it paſſed, and of ſome of them that gave it.

XIV. It lieth onely in perſonal Actions other than Treſpaſſes.

XV. The Jury here (called the *Grand-Jury*) are twenty four, who are to be warned the firſt day.

XVI. The Proceſs againſt the party is Summons, Reſummons, as in Mortdanceſter, *&c.*

XVII. The Proceſs againſt the Petty Jury is *Venire facias*, and diſtreſs.

XVIII. The Petty Jury muſt be all preſent, when the Grand Jury is taken, and may plead in Bar of the Attaint, but not in abatement of the writ.

XIX. The Plaintiff in the Attaint can give no more evidence than was given at the firſt; but the Defendant in affirmance of the firſt Verdict, may.

XX. *Audita querela*, is for one being or to be in execution, to relieve him upon good matter of diſcharge, which he hath no means to plead.

XXI. The Proceſs where the *Audita querela* is ſued before Execution, is a *Venire facias* and diſtreſs, and upon

on default after appearance and plea pleaded, a *distringas ad audiendum judicium*; for thereby Judgment is to be given against him.

XXII. In case of an *Audita querela* sued before execution, he may have a *supersedeas* upon good matter of discharge surmised in the Writ of *Audita querela*, to stay for once the Execution upon sureties.

XXIII. After Execution the Process is onely a *Scire facias*; for if the Process should be by distress infinite, peradventure the party would lose Issues to keep the others Body in perpetual prison.

FINIS.

STATUTES.

CHAP. 1.

RULE 1. IN the Second Volumn of Old Statutes is a long Act made Anno 12. *E.* 1. entituled *Statuta Walliæ*, whereby it appeareth, that *Wales* was then incorporated into *England*: There are alſo many good Laws concerning the Diviſion of *Wales* into Counties, alſo for Trials of Actions, together with divers forms of Writs, and the proceeding thereupon, much like the Laws of *England*, &c.

Stat. 27. *H.* 8. 26. Incorporateth *Wales* into *England*, and the other Statutes that concern it, are 28. *E.* 3. 2. 9. *H.* 4. 4. 2. *H.* 5. *Stat.* 2. 5. 26. *H.* 8. 4. 26. *H.* 8. 6. 27. *H.* 8. 7. 33. *H.* 8. 13. 23, 35. *H.* 8. 26. 18. *El.* 8. 27. *El.* 9.

RULE 35. *Stat.* 37. *H.* 8. 21. By aſſent of Ordinary, Incumbent and Patron under their Seals, an Union may be made of two Churches, being not above ſix pounds yearly value in the Kings Books, nor diſtant one from another above a Mile, ſaving to the King his Tenths and firſt Fruits.

Incorporate Towns, it muſt be by aſſent of the Corporation.

If ſuch a poor Pariſh will within a year aſſure by writ-

ting to the Incumbent and his Succeſſors, 8 *l.* yearly the Union ſhall be void.

RULE 36. *&c. Magna Charta*, 36. 9. *H.* 3. If any ſhall give Lands to a Religious Houſe, the Grant ſhall be void, and the Land forfeit to the Lord of the Fee.

Stat. of Gloceſter, or *de Religioſis*, 7. *E.* 1. If Lands be aliened in Mortmain, the immediate Lord hath a year to enter, the next Lord half a year, and ſo from Lord to Lord, till it come to the King.

Weſtm. 2. 32. 13. *E.* 1. Eccleſiaſtical perſons being debarred by the former Statutes to obtain Lands in Mortmain by alienation, endeavoured fraudulently to obtain them by default in a ſuit. And therefore in ſuch caſe it was ordained by this Statute, that it ſhould be inquired by the Country, whether or no the Demandant had juſt Title; and if ſo, then he ſhould recover Seiſin; but if otherwiſe, the Lord of the Fee ſhould enter as before.

Weſt. 2. 41. The King (founder of a Religious Houſe) may ſeize Lands, which he gave them, if they alien.

Ordinatio de perquirendis libertatibus, 27. *E.* 1. Before Licences are obtained to Amortize Lands, the Writ *Ad quod damnum*, ſhall iſſue out of the Chancery to enquire concerning the ſame, *&c.*

The Statute of Amortizing of Lands, 34. *E.* 1. Lands ſhall not be aliened in Mortmain, where there be mean Lords without their conſents declared under their Seals; neither ſhall any thing paſs, where the Donor reſerveth nothing to himſelf, or where the Inquiſition is made, and returned without Warrant, *viz.* without the Writ Original returned with the Inquiſition, *&c.*

The Statute of Writs for making Inquiſitions of Lands to be put in Mortmain, Incerti temporis, Writs of *Ad quod damnum*, for amortizing Lands ſhall not be granted, but upon petition in full Parliament.

Statutum de Clero, 3. 18 *E.* 3. If Prelates, Clerks beneficed

neficed, or other people of Religion, being impeached for purchaſing Lands in Mortmain, ſhew the Kings Charter of Licence, and Proceſs thereupon made by an Inqueſt of *Ad quod damnum*, or of the Kings Grace, or by Fine, they ſhall be in peace: And albeit they cannot ſufficiently ſhew that they have entred by due proceſs Licence to them granted, yet they ſhall be well received to make a convenient Fine for the ſame.

Stat. 15. *R.* 2. 5. Lands converted to a Church-yard, or purchaſed to the uſe of any Spiritual perſon, Guilds, or Fraternities, or by a Corporation ſhall be within the Statute of *Gloceſter*, 7, *E.* 1.

CHAP. 2.

RULE 3. *Præcog. Reg.* 9. 17. *E.* 3. The King ſhall have the Cuſtody of the Lands of Natural Fools, taking the profits thereof without waſte and finding them neceſſaries, and after their death, ſhall render them to the right Heir.

Præc. Reg. 10. The King ſhall provide, that the Lands of Lunaticks be ſafely kept without waſte, and that they and their Families (if they have any) ſhall be maintained with the profits thereof, and that the reſidue be kept for their uſe: and delivered unto them when they become to be of right mind: ſo as their Lands ſhall not be aliened, neither ſhall the King have any profit thereof to his own uſe. But if they dye in ſuch eſtate, the Reſidue ſhall be diſtributed for their Souls by the Advice of the Ordinary.

RULE 4. *Stat.* 1 *R.* 3. 1. All Grants, Conveyances, Recoveries, and other Aſſurances, made by *Ceſti que uſe*, (being of full age, *Compos mentis*, and at large) ſhall be good againſt him and all others claiming as his Heir or Heirs, or to his Uſe, ſaving the Right of all others.

Stat. 4. *H.* 7. 17. The Heir of *Ceſti que uſe*) of

Knight-ſervice Land) ſhall be in Ward and pay relief.

Stat. 19. *H.* 7. 15. Execution upon Judgment, Statute or Recognizance ſhall be good againſt *Ceſty que uſe*.

The Heir of *Ceſty que uſe* ſhall pay relief, heriot, *&c.*

Ceſty que uſe being a Bond man, the Land ſhall be ſeiſed by the Lord.

Stat. 27. *H.* 8. 10. Where any be ſeiſed to the uſe or truſt of another, *Ceſty que uſe*, or truſt ſhall have the poſſeſſion in ſuch quality, manner, and condition, as he had the uſe or truſt: So when any be ſeiſed to the uſe or intent that another ſhall have a yearly Rent of the ſame lands, *Ceſty que uſe* of the Rent ſhall be deemed in the poſſeſſion thereof, of like Eſtate as he had that uſe.

Stat. 27. *H.* 8. 16. Bargains and Sales to raiſe an uſe of Inheritance or Freehold muſt be by deed indented and inrolled within ſix months, in a Court of Record at *Weſtm.* or in the County where the Land lieth.

RULE 9. *Stat.* 50. *E.* 3. 6. Fraudulent aſſurances of lands or goods to deceive Creditors ſhall be void, and the Creditors ſhall have Execution thereof, as if no ſuch gift had been made.

Stat. 3. *H.* 7. 4. All Deeds of gift of goods and chattels, made of truſt to ones own uſe, ſhall be void.

Stat. 13. *El.* 5. Every gift, grant, bargain, and conveiance of lands, or chattels, or of a leaſe, rent, common, or other profits out of them, and every bond, ſuit, judgment and execution had or made for the defrauding of any perſons juſt action, ſuit, debt, account, damage, penalty, forfeiture, heriot, mortuary, or relief, ſhall be void againſt that perſon, his Heirs, Executors, *&c.*

The parties, or privies (knowing ſuch a fraudulent gift) which ſhall juſtifie it to be done *bona fide*, or ſhall alien ſuch things ſo to them conveyed, forfeit one years value of the lands or profits out of it, and the whole value of the goods and chattels, and the ſum of ſuch

covenous

covenous Bond, and ſhall have half a years impriſonment.

This Act extends not to common Recoveries, nor Vouchers in a *Formedon*, nor to any Gift, &c. *bona fide*, and upon good conſideration to any perſon, not knowing of the Fraud.

Stat. 27. *El.* 4. Every Conveyance, Grant, Charge, Leaſe, Eſtate, Incumbrance, or Limitation of uſe of Lands, Tenements, or Hereditaments made for the defrauding of Purchaſers of the Land it ſelf, or any part, or profit out of it, ſhall be void againſt the perſon ſo purchaſing for Money, or other good conſideration, and againſt all claiming under him, with penalty, as in the former Statute.

This extendeth not to the avoiding of any Grant, &c. upon good conſideration and *bona fide*.

If any ſuch conveyance, &c. be made with a Clauſe of Revocation or Alteration at his pleaſure, by writing, and after he ſhall bargain, demiſe, ſell, grant, convey, or charge the ſame Lands, &c. for Money or other good conſideration (the conveyance not revoked nor altered) then ſuch conveyance, &c. ſhall be void againſt the Bargainees, &c. and all claiming under them, lawful Mortgages only excepted.

RULE 11. *Præcog. Reg.* 15. 17. *E.* 2. The Kings Gift or Grant of Land, or a Mannor *cum pertinentiis*, conveyeth, not Knights Fees, Advowſons, or Dowers, without expreſs words.

Stat. 1. *H.* 4. 6. In a Petition to the King for Lands, Annuities, Offices, &c. their value ſhall be therein expreſt; otherwiſe, the Letters Patents thereupon ſhall be void.

Stat. 18. *H.* 6. 1. All Letters Patents, which bear not date the day of the delivery of the Kings Warrant into the Chancery, ſhall be void.

Stat. 34, 35. *H.* 8. 21. A confirmation of all eſtates obtained

tained by, or conveyed from the King within ſeven years after the fourth of *February*, in the 27 year of his Reign, notwithſtanding any Miſ-recital, Non-recital, &c. with divers proviſoes, &c. therein contained.

Stat. 1. *E.* 6. 8. Such another Statute for the Confirmation of all Grants, made, and to be made by *E.* 6. from the 28 of *January* in the firſt year of his Reign, and ſo during his life, with ſuch proviſoes, &c. as in the ſaid Act of *H.* 8.

Stat. 4, 5. *P. M.* 1. Another like Statute for the Confirmation of Grants made, and to be made, to, or by the Queen, or the King and Queen, from the firſt of *July* in the firſt year of her Reign, and ſo during her life, with proviſoes, as in the former Acts.

Stat. 18. *El.* 2. Another like confirmation of all Grants made to, for, or by the Queen, or to be made within ſeven years next after the end of this Seſſion, with like proviſoes, &c.

Stat. 43. *El.* 1. Another Confirmation of Grants made by Qu. *El.* from the eighth of *February*, in the 2[illegible] year of her Reign, until the end of this Seſſion and a year after.

Stat. 21. *Jac.* 25. The King, &c. ſhall not take advantage of Forfeitures againſt his Patentees, before Commiſſion proceſs, &c.

Stat. 21. *Jac.* 29. A Confirmation of Leaſes of the Dutchy Lands in *Cornwal*.

Stat. 1. *Car.* 2. Such another for Leaſes thereof, to be made within three years.

CHAP. 3.

RULE 6. *Stat.* 32. *H.* 8. 34. Grants of Reverſions may enter upon Farmers for any Forfeiture (or condition) and have like advantages againſt them (by Action only, for any other Covenant, Condition, or Agree-

Agreement contained in the Indenture of their Leaſe) as the Leſſors, their Heirs, or Succeſſors might: And the like for the Leſſees againſt the Grantees of Reverſions, Recovery in value only excepted.

CHAP. 4.

RULE 9. *Stat.* 6. *H.* 8. 15. If any make ſuit to the King for Lands, Offices, or other things, formerly granted to any perſon during the Kings pleaſure (the firſt Patentee being ſtill in life) the laſt Grantee ſhall expreſs in his Petition or Patent the former Patent, and the determination of the Kings Pleaſure concerning the ſame, otherwiſe the laſt grant ſhall be voyd.

RULE 15. *Gloceſter* 7. 6. *E.* 1. If a Woman alien her Dower in Fee or for Life, the Heir or other perſon, to whom the Land ought to revert, ſhall recover againſt the Alienee in her life time.

CHAP. 5.

RULE 5. *Merton* 9. 20. *H.* 3. A Child born before Marriage is a Baſtard, albeit the common order of the Church be otherwiſe.

Stat. 9. *H.* 6. 11. No Writ ſhall be awarded to the Ordinary to certifie Baſtardy, before three Proclamations be made in Chancery in three months, *viz.* once every month, that all perſons who have any thing to object againſt the party for Baſtardy, ſhall ſue to the Ordinary for that purpoſe.

RULE 8. *Merton*, 5. 10. *H.* 3. Uſury ſhall not run againſt any within age from the time of the death of his Anceſtors, (whoſe Heir he is) unto his lawful Age; yet the Principal with uſury due before the Anceſtors death, ſhall be paid, notwithſtanding this Act.

RULE. 10. *Stat.* 32. *H.* 8. 33. The dying ſeiſed of a diſſeiſor with force, and without Title, taketh not away the entry of him and his Heirs, who at the time of ſuch diſcent had good title of Entry, unleſs the Diſſeiſor had peaceable poſſeſſion by five years next after ſuch diſſeiſin.

RULE 14. *Weſtm.* 2. 1. 13. *E.* 1. The Will of the Giver (according to the form in the Deed of Gift manifeſtly expreſſed) ſhall be from henceforth obſerved: So that they to whom the Land was given under ſuch condition (viz. *That if the Donee or Donees ſhould die without Iſſue, that then the Land ſhould revert to the Donor*) ſhould have no power to alien the Land ſo given, but that it ſhall remain to their Iſſue after their death, or ſhall revert to the Giver or his Heirs, if Iſſue fail: Neither ſhall the ſecond Husband of any ſuch Woman, (*being Donee in tail*) from henceforth have any thing of the Land ſo given upon condition, after the death of his Wife, by the *Law* of *England*: Neither ſhall the Iſſue of ſuch Husband and Wife ſucceed in the Inheritance; but immediately after the death of the Husband and Wife, to whom the *Land* was given, it ſhall return to their Iſſue, or to the Giver, or his Heirs, as aforeſaid.

A Fine levied of ſuch *Lands* ſhall be void in *Law*; and the Heir or Reverſioner (albeit they be for full age, in *England*, and out of Priſon) need not make their claim: Howbeit this Clauſe concerning a Fine is altered by 32. *H.* 8. 39. which ſee *infra*.

Stat. 34. & 35. *H.* 8. 20. No common recovery of *Lands* in tail, of the Gift or other Proviſion of the King or his Progenitors (though it be with voucher againſt Tenant in tail, the Remainder or reverſion being in the King at the time of the Recovery) ſhall bind the Heir in tail, or bar him of his Entry. Tenant in tail ſhall take no advantage for any Recompence in value againſt the Vouchee or his Heirs.

RULE

RULE 24. *Mag. Cart.* 7. 9. *H.* 3. The Wife after the death of her Husband, ſhall abide in his chief Meſſuage forty days, within which time her Dower ſhall be aſſigned her: If the chief Meſſuage be a Caſtle, then ſhe ſhall have a competent Houſe provided her, till her Dower be aſſigned.

Weſtm. 2. 34. 13. *E.* 1. A Woman that leaveth her Husband and abideth with an Adulterer, ſhall not have Dower, unleſs the Husband (voluntarily and without coercion of the Church) reconcile her and ſuffer her to dwell with him.

Stat. 11. *H.* 7. 20. If a Woman that hath an Eſtate in Dower for life, or in tail joyntly with her Husband, or only to her ſelf, or to her uſe in any lands, *&c.* of the Inheritance or Purchaſe of her Husband, or given to the Husband and Wife by the Husbands Anceſtors, or any ſeiſed to the uſe of the Husband, or his Anceſtors, do ſole (or which an after taken Husband) diſcontinue or ſuffer a Recovery by Covin, it ſhall be void; and he to whom the Land ought to belong after the death of the ſaid Woman, may enter (as if the Woman were dead) without diſcontinuance or recovery: Howbeit, the Woman may enter after the Husbands death, but if the Woman were ſole, the Recovery or Diſcontinuance barreth her for ever.

This Act extends not to any Recovery or Diſcontinuance with the Heir next inheritable to the Woman, or by his conſent of Record enrolled.

Stat. 27. *H.* 8. 10. Where an Eſtate is made in poſſeſſion or uſe to Husband and Wife and his Heirs, or the Heirs of their Bodies, or of one of their Bodies, or to them for their lives, or for the Wives life for her Joynture; In any of theſe caſes he ſhall not have Dower: Howbeit upon a lawful eviction of that Joynture, ſhe ſhall be endowed according to the rate of her Husbands land, whereof ſhe was dowable.

Such

Such a Joynture being made after Marriage, the Wife (after the Husbands death) may refuſe it, and betake her to her Dower, unleſs ſuch Joynture be made by Act of Parliament.

CHAP. 7.

RULE 7. *Stat. de diſtrictione Scaccarii*, 51, *H.* 3. The Owner of impounded Cattel may give them food without diſturbance.

A Diſtreſs taken for the Kings Debt ſhall not be ſold within 15 days, and upon ſhewing of a Tally, and giving ſecurity for his appearance in the Exchequer upon the next accompt, the diſtreſs ſhall ceaſe: The Sheriff ſhall alſo attach the party that received the Debt, to be there likewiſe at the ſame time.

Neither draught Cattel, nor Sheep ſhall be diſtrained (except for *Damage-feaſant*) ſo long as other goods may be found to ſatisfie the Debt: Diſtreſſes ſhall be reaſonable: The Sheriff ſhall anſwer all Debts received, and where the Sheriff chargeth himſelf, the Debt ſhall be quitted.

Marlebr. 15. 52. *H.* 3. It ſhall not be lawful for any (except the King and his Officers, having ſpecial Authority) to take Diſtreſſes out of his Fee, or in the Kings high-way, or in the common-ſtreet.

Marlebr. 4. None ſhall drive a Diſtreſs out of the County wherein it is taken, in pain to be fined, and to make recompence to the party grieved: None ſhall take an unreaſonable Diſtreſs, in pain of Amerciament.

Weſtm. 1. 16. 3. *E.* 1. None ſhall drive a Diſtreſs out of the County, or diſtrain wrongfully upon the penalties provided by the Statute of *Marlebr.*

Weſtm. 2. 36. 13. *E.* 1. None ſhall procure any to diſtrain another to make him appear at the County Court or any other Inferiour Court, on purpoſe to vex him, and

and put him to charge and trouble, in pain to make fine to the King, and to pay the party grieved treble damages.

Weſtm. 2. 37. 13. *E.* 1. No Diſtreſs ſhall be taken but by Bayliffs known and ſworn, in pain to reſtore damages to the party grieved, and to be grievouſly puniſhed by the King.

Artic. Cler. 9. 9. *E.* 2. Diſtreſſes ſhall not be taken in the high-way, nor in the ancient Fees of the Church.

Stat. 1. 2. *P. M.* 12. No Diſtreſs of Cattel ſhall be driven out of the Hundred, Rape, Wapentake, or Lath, where it is taken, except to a pound *Overt* within the ſame Shire, not above three miles diſtant from the place where it is ſo taken: Neither ſhall a Diſtreſs be impounded in ſeveral places, whereby the Owner may be conſtrained to ſue ſeveral *Replevins* for the delivery thereof, in pain to forfeit to the party grieved for every offence committed againſt the Act, 5 *l.* and treble damages.

None ſhall take above 4 *d.* for the poundage of one whole diſtreſs (and where leſs is uſually taken, to take leſs) in pain to forfeit it to the party grieved 5 *l.* and ſo much money, as is taken above 4 *d.*

RULE 24. *Quia emptores terrarum*, 18. *E.* 1. In all Feoffments to one and his heirs, the Feoffee ſhall hold his Land, and the chief Lord of the Fee by the ſame Services that the Feoffer held before.

Here, if the Feoffment be made of parcel, he ſhall hold of the chief Lord *pro particula*, according to the quantity of the Land, and the Feoffor ſhall be ſet free for that part.

RULE 27. *Mag. Cart* 31. 9. *H.* 3. If a Baronie, *&c.* Eſcheat to the King, the Tenants that hold of the ſame (not having other Lands that hold of the King in chief) ſhall pay like relief, and do like ſervices to the King after ſuch Eſcheat, as they paid or did to their former Lords, and not otherwiſe.

Stat.

Stat. 1. *E.* 6. 4. So alſo it is, when a Seigniorie cometh to the King by attainder, conviction, outlawry, diſſolution, or ſurrender.

Stat. 1. *E.* 3. *Stat.* 2. *Cap.* 12. Lands holden of the King in chief, and alienedwithout licence ſhall not be forfeited; but a reaſonable Fine ſhall be taken (of ſuch Lands ſo aliened) by due proceſs in Chancery. And *Cap.* 13. Lands holden of the King, as of ſome Honour ſhall not be taken into the Kings hands, as if they were holden of the King in chief, as of his Crown.

RULE 31. *Stat.* 33. *H.* 8. 22. A Fee ſet down for reſpiting of Homage in the Exchequer or other Courts.

RULE 35. *Marlebr.* 9. 52. *H.* 3. None enfeoffed by Deed ſhall be diſtrained to do ſuit to his Lords Court, unleſs he be bound to do it by the form of his Deed, or he or his Anceſtors have uſed to do it, before the Kings firſt Voyage in *Britain, being about* 39 *years and one half before the making of this Statute.*

The eldeſt Copartner ſhall only do ſuit of Court, and the other Partners ſhall be contributary: Alſo one Joynttenant or Tenant in Common ſhall do the Suit, and the reſt ſhall contribute.

RULE 38. *Weſtm.* 35. Reaſonable Aid ſhall be 20 *s.* for a whole Knights Fee, and as much for 20 *l.* Land in Soccage; and ſo more or leſs according to that rate.

It ſhall be levied at 15 years age of the Son, and 7 years of the Daughter; and if the Father levy it, and dye before the Marriage of the Daughter, the Fathers Executors ſhall be charged therewith, and if they have not Aſſets, the Heir ſhall be therewith charged.

Stat. 25. *E.* 3. *Stat* 5. 11. Reaſonable Aid to make the Kings eldeſt Son a Knight, and to marry his eldeſt Daughter, ſhall be levied of all Lands holden of the King (without Mean) according to the rate in the former Statute.

RULE 43. *Marlebr.* 17. 52. *H.* 3. Guardian in ſoccage ſhall

ſhall make no waſt, ſale, or deſtruction of the Heirs Inheritance, but ſafely keep the ſame to the uſe of the Heir, and when he comes to age ſhall anſwer the Iſſues thereof by a lawful accompt, ſaving his reaſonable coſts: neither ſhall ſuch Guardian ſell the Marriage of ſuch Heir but to his advantage.

RULE 48. *Magn. Cart.* 3. 9. *H.* 3. The Lord ſhall take Homage of the Heir before he have the Wardſhip; and ſuch Heir after he hath been in Ward, ſhall (at his full age of 21 years) have his Inheritance without relief or fine; and if the Heir within age be made a Knight, yet his Land ſhall remain in ward, until his full age aforeſaid.

Marlebr. 6. 52. *H.* 3. If one enfeoffe his Heir within age to cauſe the Lord to loſe his Wardſhip, and dye, yet the Lord ſhall have the Wardſhip.

So when a fraudulent Feoffment is made by a Tenant upon condition to revert (after certain years) to him and his Heirs, if the Feoffees pay not a certain ſum to the value, or more than the value of the Lands: In ſuch caſe the Lord ſhall have a Writ *de Cuſtodia reddenda*: And if (being able to aver this matter) he recover, yet the Feoffees ſhall have the Land again, when the Heir comes to age: Howbeit, the Lord not being able to aver it, ſhall render the Feoffees their Coſts and Damages.

Stat. 32. *H.* 1. Two Joynttenants or more holding of the King, and he that hath the Fee dyeth, the King ſhall preſently have the wardſhip and marriage of the Body of his Heir, if he be within age: Saving to every Woman her Dower of two parts of thoſe Lands, divided from the third part (as in that Statute is directed) and ſaving to the King during the Wards Minority, the reverſion of ſuch Joynttenants, and Tenants in Dower.

RULE 50. *Merton*, 6. 20. *H.* 3. If any Heir (14 years old, or above) marry himſelf without licence of his

Lord

Lord to defraud him of the Marriage, and the Lord offer him a convenient Marriage without diſparagement, the Lord ſhall retain the Land beyond the term of his full Age, until he may receive the double value of the Marriage.

If a Lord marry the Heir within 14 years of age, whereby he is diſparaged, he ſhall loſe the Wardſhip, and the profits of the Lands th all (by the Wards friends) be converted to the Wards uſe.

Merton. 7. 20. *H.* 3. If an Heir will not marry at the Requeſt of the Lord, he ſhall pay to the Lord as much as his Marriage is worth; for (of right) the Marriage of an Heir within age pertaineth to the Lord.

Weſt. 1. 22. 3. *E.* 1. The Lord may hold the Land of Heirs Female two years after their age of 14, within which two years, if he marry them not, they ſhall go quit without giving any thing for the Wardſhip or Marriage; and if they will not accept a convenient Marriage tendred by the Lord, he ſhall hold the Land till their age of 21 years, and over, until he have taken the value of the Marriage.

Stat. 4, 5. *P. M.* 8. None ſhall take or convey, or cauſe to be taken or conveyed away any Maid or Woman Child unmarried, being within the age of 16 years, out of the cuſtody, and againſt the Will of the Father or Mother of ſuch Child, or of the perſon, to whom the Father of ſuch Child (by his laſt Will, or other Act in his life time) hath appointed the Governance of ſuch Child (except ſuch taking ſhall be (without fraud) by or for the Maſter or Miſtris of ſuch Child, or her Guardian in Soccage or Chivalry, in pain of two years impriſonment without Bail, or elſe to pay ſuch Fine, as ſhall be aſſeſſed by the Council in the Star-Chamber.

None ſhall take away or deflower any ſuch Child, or againſt the Will of her Father, if he be living, or of her Mother (having the cuſtody of her) if the Father be dead,

dead, contract Matrimony with any ſuch Child, (except by the Title of Wardſhip) in pain of five years impriſonment, or to pay a Fine to be aſſeſſed by the ſaid Council. The Fines are to be divided betwixt their Majeſties and the Proſecutor.

The ſaid Council and Juſtices of Aſſize have power to hear and determine theſe Offences.

If any ſuch Child (above the age of 12 and under the age of 14) conſent to any ſuch contract of Matrimony, the next of the Kin to whom her Inheritance ſhould come, ſhall enjoy it during her life: but after her deceaſe, it ſhall revert to the right Inheritor, other then to him, that did ſo contract Matrimony. This Act ſhall not prejudice any cuſtom in *London*, or any other City or Town concerning Orphans.

CHAP. 8.

RULE 6. *Merton* 4 20. *H.* 3. Lords of waſts, or commonable woods or paſtures, may approve againſt their Tenants part thereof, ſo as they leave ſufficient Common beſides, together with free ingreſs and regreſs to enjoy the ſame.

Weſt. 2 46. 13. *E.* 1. Such a Lord may approve in like ſort againſt his neighbours which have common appurtenance, and for a Windmill, Sheepcote, Dairy, enlarging of a Court or Courtilage, none ſhall be grieved by Aſſize of novel diſſeiſin.

If a Ditch or Hedge made for that purpoſe be thrown down, and the Parties offending be not diſcovered by the Towns adjacent, they ſhall make it up again, and render damages.

Stat. 3. *E.* 6. 3. Upon Judgment for the Plaintiff in an Aſſize upon any branch of the ſaid Statutes of *Merton* and *Weſtm.* 2. The Court ſhall award treble damages.

This

This Statute ſhall not extend to Houſes built before the making thereof, not having above three Acres laid to them, nor to a Garden, Orchard, or Pond, not exceeding two Acres.

Stat. 43. *El.* 11. All Contracts made betwixt Lords and Commoners of waſts, &c ſubject to ſurrounding ſhall be good, ſave where the Queen, &c. hath an Intereſt. This Act ſhall not be prejudicial to Lords and Commoners in any part of waſts, not aſſigned to Drainers, &c. nor to any Port or Haven.

CHAP. 9.

RULE 3. *Stat.* 19. *H.* 7. 15. Upon a Feoffment made to the uſe of a Villein, the Lord may enter into the Land it ſelf.

RULE 7. *Stat.* 9. *R.* 2. 2. In a Suit by a Villein againſt his Lord, the Lord ſhall not be barred of their Villeins, becauſe of their anſwer in Law.

RULE 11. *E.* 61. 6. 16. No Office or Deputation thereof, or of any part thereof, which concerneth the adminiſtration or execution of Juſtice, or the receit, controlement, or payment of the Kings Money, or Revenue, or any Accompt, Aulnage, Auditorſhip, or Surveying of the Kings Lands, or Cuſtoms, or Adminiſtration, or Attendance in any Cuſtom-houſe, or keeping of any of the Kings Towns, Caſtles, or Fortreſs (being places of ſtrength or defence) or any Clerkſhip in a Court of Record, ſhall be bargained or ſold, or any reward, or agreement of reward taken for it, upon pain that the Seller, &c. ſhall forfeit all his Intereſt in ſuch Office or Deputation, &c. and the Buyer be a diſabled perſon to enjoy the ſame. And all Bonds, &c. to be void, as againſt him, by whom they are made. Howbeit, all Acts executed by any ſuch perſon offending before he be removed from his Office, &c. ſhall remain good.

This

This ſtatute extendeth not to any office of inheritance, or to any parkerſhip, or to any offices to be given by the Chief Juſtices of the Kings Bench or Common place, or by any Juſtices of Aſſize.

CHAP. 10.

RULE 2. *Stat.27.H.* 8. 24. No ſubject ſhall have authority to pardon any felony, or any acceſſories to felony, or any outlawry for ſuch offences. Nor to make any juſtices of Eyre, Aſſize, Peace, or Goal-delivery: All originall Writs, Indictments of treaſon, felonie, treſpaſſe, and proceſſe upon the ſame ſhall be only in the Kings name, and the *Teſte* in his name, that hath the Franchiſe.

Every Writ and indictment, whereby any thing is ſuppoſed to be done againſt the peace, ſhall be ſuppoſed to be done againſt the Kings peace onely, and not againſt the peace of any ſubject. The King ſhall have, all fines iſſues, amerciaments, and forfeitures loſt by any Officers of Franchiſes for non-execution, or inſufficient returnes of proceſſe, or for any miſdemeanour concerning their office, with many proviſoes in the ſame Statute.

CHAP. 11.

RULE 4. *Weſtm.2.23.13 E.1.* Executors ſhall have a Writ of accompt, and the action and proceſſe in the ſame writ, as their teſtator ſhould, if he had lived.

Stat. 4 *E.*3.71. Executors ſhall have an action for a treſpaſs done to their teſtator, as of his goods and chatcels carried away in his life, and recover their damages in like manner, as he, whoſe executors they are, might have done if he had lived.

Stat. 32. *H.* 8. 1. He that hath lands, tenements, or herditaments in ſoccage, and none holden by Knight-ſervice, or ſoccage in cheif, may deviſe all by his will in writing, or give all by act executed in his life; ſo may he that hath land holden by ſoccage in chief, and other land holden of a common perſon by ſoccage, and none holden by Knight-ſervice: ſaving to the King *primer ſeiſin*, relief, ſuing of the ſame out of the Kings hands, fines for alienation, &c. and all other duties for the ſoccage in cheif, as before hath been accuſtomed.

He that hath lands, &c. holden by Knight-ſervice (whether he hath any other lands holden of the King or of any other perſon by Knight-ſervice, or otherwiſe, or not) may do the like for two parts in three to be divided in certainty, for the advancement of his wife or children, and payment of his debts: ſaving unto the King the wardſhip or *primer ſeiſin* of the third part (without any charge, dower, &c.) and finds for alienation.

He that hath lands, &c. holden by Knight-ſervice (whether of the King alone by Knight-ſervice, not in cheif, or of a common perſon, or ſome holden of the King, ſome of a common perſon) and other land in ſoccage, may deviſe by will, or give by act executed in his life, two parts of that holden by Knight-ſervice, and all the ſoccage: ſaving to the Lord of the Land holden by Knight-ſervice the wardſhip of a full third part thereof, without any charge, dower, &c.

Provided, that every one ſhall ſue his liverie, and pay his relief and heriot, as if this act had never been made.

Stat 34 35. *H.* 8 The former Statute ſhall be extended to enable deviſes, and other acts onely of land in Fee-ſimple.

And

And if the partie, that maketh the will or other Act be ſeized in Coporcenerie, or in the common; it ſhall be good for ſo much, as in himſelf of right is.

The wardſhip, relief, *primer ſeiſin*, &c. ſhall be of lands, that deſcend immediately after the death of him that maketh the will or other act, as well in fee-tail as fee-ſimple; And the deviſe of two parts reſidue ſhall be good, though it be of all his fee-ſimples land: Such a will ſhall be good for two parts, (in caſe only where two may be diviſed) though it be made for the whole or more than two parts.

Such wills made by a *feme-covert*, Infant under the age of 21 years, Ideot, or one of *non ſane memory*, ſhall not be good. See alſo ſome other things there for the explanation of the former Act of 32 *H* 8. 1.

RULE 10. *Stat.* 21 *H.*8.4. That part of the Executors, which take upon them the charge of a will, may ſell the land deviſed by the Teſtator to be ſold, albeit the other part which refuſe, will not joyn with them.

RULE 11. *Stat.*25 *E.*3. *Stat* 5.5. Executors of Executors ſhall have actions of debt, accompt, and goods carried away of the firſt Teſtators, and Execution of Statute-Marchants recognizances made unto him; And ſhall alſo anſwer for Aſſets, as the firſt Executor, ſhould have done.

RULE 12. *Weſtm.* 2. 19.13.*E.*1. The Ordinary ſhall ſatisfie debts wherein the Inteſtate was bound, as Executors ſhould.

Stat. 31. *E.*3.11. The Ordinaries ſhall depute next freinds of the inteſtate to adminiſter his goods, who ſhall ſue and be ſued, and be accountable to the Ordinaries, as executors ſhould.

Stat. 21 *H.* 8. 5. Adminiſtration ſhall be committed to the widow of the Inteſtate, or to the next of his blood or to both, at the diſcretion of the Ordinary. The Or-

dinary not doing his duty herein forfeiteth ten pounds.

*Stat.*43. *El.*8. If any obtain goods of an Inteſtate by fraud (as by procuring adminiſtration to be granted to a ſtranger of mean eſtate, or not to be found) and not upon valuable conſideration, &c. he ſhall be charged as executor in his own wrong as far as the goods or debts extend.

RULE 20 *Weſtm.*1.4.3.*E.*1. Where a man, dog, or cat, eſcape alive out of the Ship, it ſhall be no wreck; but the things ſhall be priſed by the Sheriff or Coroner and delivered to thoſe of the town, where they be found, to anſwer for them: So as if any within a year and a day prove, that the goods are his, they ſhall be reſtored to him.

CHAP. 13.

RULE 3. *Stat.*32.*H.* 8. 28. Leaſes made by tenant in tail, or by him, who is ſeiſed in the right of his wife or Church (they being of full age at the time of ſuch a leaſe made) ſhall be good againſt the Leſſors, their wives, heirs, and ſucceſſors.

This Statute ſhall not extend to any leaſe to be made of lands in the hands of any Farmer by force of any old leaſe, unleſſe ſuch an old leaſe expired within a year after the making of the new, nor to any grant to be made of any reverſion of ſuch lands, nor to any leaſe of lands, which have been let to Farm 20 years, before ſuch leaſe made; nor to any leaſe made without impeachment for waſte; nor for above 21 years, or three lives from the making thereof; and that upon every ſuch leaſe there be reſerved ſo much yearly rent, as hath bin uſually paid within 20 years before ſuch leaſe made: And the reverſioner of ſuch lands, &c. may (after the death of ſuch leſſor, or his heirs) have ſuch remedie againſt

againſt ſuch leſſee, his executors and aſſigns, as ſuch leſſor might have had againſt ſuch leſſee.

Provided, that all leaſes made by the husband of land, &c. (being the inheritance of the wife) ſhall be made by Indenture in the name of the husband and wife, and ſhe to ſeal to the ſame, and the rent ſhall be reſerved to the husband and wife, and the heirs of the wife. And here, the husband ſhall not alien or diſcharge the rent, or any part thereof longer then during the coverture, unleſſe it be by fine levied by husband and wife.

No fine, ſeoſſment, or other act, done by the husband only, of the inheritance or free-hold of the wife ſhall make any diſcontinuance, or prejudice the wife or any other, who is to enjoy the eſtate after her deceaſe, fines levied by the husband and wife onely excepted.

Stat. 1. El. *not printed.* All eſtates made by any Arch-Biſhop, or Biſhop of any Mannors, Lands, *&c.* parcel of their Biſhoprick, other than to the Queen, *&c.* and other than for 21 years, and three lives from the time of ſuch eſtate made; and whereupon the accuſtomed yearly rent or more ſhall be reſerved, ſhall be void.

Stat. 13. El. 10. All leaſes, conveyances, and eſtates made by any Maſter and Fellows of a Colledge, Dean and Chapter, Guardian of an hoſpital, Parſon, Vicar, or other having any eccleſiaſtical living, &c. other then for 21 years, or three lives from the making, and whereupon the accuſtomed yearly rent or more is reſerved, ſhall be void.

Stat. 14. *El.* 11. The branch of the Statute of 13. *El.* 10. made to avoid certain Leaſes, ſhall not extend to houſes ſcituate in Corporations, or Market-towns, or the Suburbs thereof, nor to the grounds of ſuch houſes ſo as they be not the dwelling houſes of the perſons, there reſtrained, nor have 10 acres of ground belonging

to them. Provided, that no leaſes in reverſion ſhall be made of ſuch houſes, not without reſerving the accuſtomed yearly rent at leaſt, nor without charging the leſſee with reparations, nor for a longer term than 40 years: Neither ſhall any ſuch houſes be aliened without purchaſing preſently after other lands in fee-ſimple of as good value.

Stat. 18. *El.* 11. All leaſes made by ſuch perſons, as are mentioned in 13. *El.* 10. where another leaſe is in being, not to be expired, ſurrendred, or ended within three years next after the making of ſuch new leaſe, ſhall be void: And all bonds & Covenants for renewing of any ſuch leaſe contrary to this act, or to the ſaid *Stat.* of 13 *El.* 10. ſhall alſo be void.

RULE 21. *Weſtm.* 2. 5. 13. *E.* 1. Uſurpation of Churches during wardſhip, particular eſtates, Coverture, or Vacancy, ſhall not bar the heir at full age, the reverſioner or remainder in poſſion, the feme-diſcovert, or the ſpiritual perſon in ſucceſſion, from having their writ of Advowſon poſſeſſory, *viz* a *quare impedit*, or an Aſſize of Darein preſentment, as their anceſtor, or predeceſſor might have had, uſurpation had happened in their time; whereas before this act they were (in ſuch caſes) put to their writ of right of Advowſon.

One and the ſame form of pleading ſhall be uſed in *Darrein preſentment*, and *Quare impedit*, viz. if the defendant alledged plenartie of his own preſentation, the plea ſhall not ſtay by reaſon of the plenartie, ſo as the writ be purchaſed within the ſix months; albeit he cannot recover within that time.

Where partition is made upon record, or by fine to preſent by turn, the Coparcener that is diſturbed, ſhall not be put to a *Quare impedit*, but may have remedie upon the Roll or fine by *Scire facias*: And amongſt Coparceners, if one preſent twice together, yet ſhall not

not the other bebarred, but have his other turn when it falleth.

CHAP. 14.

RULE 4. VV *Eſtm.* 2. 34. 13. *E.* 1. If a man raviſh a woman married, maid, or other, albeit ſhe did conſent after, he ſhall have judgment of life and member, and here the King ſhall have the ſuit.

Stat. 6. *R.* 2. 6. Both the raviſher and raviſhed (where ſhe conſents after the fact) are diſabled to have or chalenge any inheritance, dower, or joint-eſtate after the death of their husband or anceſtor.

In appeal of rape, the Husband, Father, or next of the blood ſhall have the ſuit, and the Defendant ſhall not be received to wage Battail.

CHAP. 15.

RULE 2. VV *Eſtm.* 1. 33. 3 *E.* 1. He that publiſheth any falſe news or tales, whereby diſcord or occaſion of diſcord & ſlander may grow betwen the King and his people, or the Nobles, ſhall be kept in priſon, untill he hath brought him forth into the Court, that did ſpeak the ſame.

Stat. 12. *R.* 2. 11. The like for him that telleth falſe lies of Nobles and great Officers, whereby diſcord may ariſe betwen the Lords and Commons.

Stat. 12. *R.* 2. 11. In the caſe of theſe former Statutes, if the party cannot bring forth him, that ſpake the ſame, he ſhall be puniſhed by the adviſe of the Council.

CHAP. 19

RULE 4. 31 *E.* 3. *Stat.* 1. 2. If any man or Town, charged

ged with the goods of fugitives or felons will (in discharge of himself) alledge another, that is chargeable therewith, he or they shall be heard, and right shall be done him.

Stat. 1. *R.* 3. 3 None shall seize the goods of any arrested for suspition of felonie before he be convict or attaint thereof, or the same goods be otherwise lawfully forfeited, in pain to forfeit to the party grieved double the value of the goods so taken to be recovered by action of debt, &c.

RULE 6. 1. *E* 6. 12. The wife shall be endowed, albeit her husband were attainted, convicted, or outlawed for treason or felonie, saving the right of others. *But note, that this is altered for treason,* by 5. *E.* 6. 12.

RULE 13. *Mag. Chart.* 22. 9 *H* 3. The King shall have the land by a year and a day, and then render it to the Lord of the fee.

Prærog. Reg. 16. 17. *E* 2. The King shall have the profits by a year and a day, and also the wasting of the tenements by pulling down houses, cutting down woods, digging up meadows, &c.

RULE 18. *Stat.* 21. *H.* 8. 7. (made perpetual by 5 *El.* 10.) The servant that hath any goods or chattels delivered unto him to keep by his master, and (with an intent to steal) doth either go away therewith, or (being in service) imbezzles or converts the same to his own use, shall be judged a thief, if the value of the goods amount to 40 *s.* Howbeit, this extendeth not to apprentices or persons within eight years of age.

RULE 21. *Stat* 21 *H* 8. 11. where a felon robbeth or taketh the money or goods of any, and is thereof found guilty, or otherwise attainted upon evidence given by the party himself, or others by his procurement; in this case, the Justices of G. D. or other Justices, before whom he is so found guilty or attainted, have power to award a writ

a writ of reſtitution for the mony or goods ſo robbed or taken, in like manner, as if the felon were attainted at the ſuit of the partie in an appeal.

RULE 23. *Stat. de Malefact. in parcis*, 21 .*E*.1. It is no felony for Foreſters, &c to kill miſdoers, &c. If they will not ſubmit themſelves.

RULE 25. *Gloceſter* 9.6 *E*.1. He that killeth a man by miſadventure, or *ſe defendendo*, muſt put himſelf upon the Country; and if he be found to have done it ſo, the King (if he pleaſe) may pardon him.

Marlbr. 25 . 5 2 . H.3, To kill a man by miſadventure ſhall be no murder.

CHAP. 21.

RULE 3, *Stat. de proditionibus* 25 .*E*.4 *Stat.* 5. *s.* It is high treaſon to kill the Chancellor, Treaſurer, &c. *as in the ſecond Rule of this Chapter.* Alſo to counterfeit currant money: To bring falſe money into this Realm counterfeit according to the money of *England* (knowing the ſame falſe) to marchandize or make payment with it. To countefeit the great Seal or privy ſeal.

Stat. 1 *Mar. Seſſ.* 1.6 Seal-manuel, privie Signet, or privy ſeal, ſtrange coin currant in this Realm.

Stat. 1,2. *P. M.* 11. To bring wittingly falſe forein coine hither, to the intent to utter it within the Realm.

Stat 5. *El.* 11. To clip, waſh, round, or file any money of this Realm, or currant here: Howbeit, this cauſeth forfeiture of land for life onely; but no loſſe of Dower or blood corrupted.

Stat. 18 *El.* 1. To impair, diminiſh falſifie, ſeal, or lighten any money by any art, wayes, or means whatſoever.

Stat. 1. *El* 1. & 6 *Stat.* 13. *El.* 1. Treaſon, to advance the Popes authority, &c.

Stat

Stat. 33. *H.* 8. 20. Attainder of high treaſon by the courſe of the common Law, or Statutes of this Realm, ſhall be of that great force, as an attainder by Parliament: And the King ſhall have the real poſſeſſion of every thing forfeited without inquiſition or office: ſaving to ſtrangers, &c.

Stat. 29, *El.* 1. No record of attainder of Treaſon ſhall be reverſed, where the party attainted is executed for the ſame offence.

Stat. 20 *H.* 10 and 5. 6. *E.* 6. 11. Any offence (made treaſon heretofore) committed out of the limits of the Realm, ſhall be inquired here by commiſſion, and like proceſs uſed, as if it had been done within the realm: One Reſiant out of the limits of the Realm may be outlawed for high Treaſon. An eſtate Tail ſhall be forfeit for high Treaſon.

CHAP. 22.

RULE 2. 36. *E.* 3. 15. All pleas which be pleaded in any of the Kings Courts &c. or in the Courts of other Lords ſhall be pleaded, ſhewed, and defended, anſwered, debated, and judged in the engliſh toung, and entred and enrolled in Latine.

RULE 7. 14. *E.* 3. 6. No proceſſe ſhall be annulled, or diſcontinued by the Clerks miſtaking in writing one ſyllable or letter too little or too much, but ſhall be ſpeedily amended without any advantage to the other.

Stat. 9. *H.* 5. 4. The Juſtices before whom ſuch plea or records be made, or ſhall be depending, may make ſuch amendment as well after judgment, as before, ſo long as ſuch record or proceſſe ſhall continue before them.

Stat. 4. *H.* 6. 3. The Statute of 9. *H.* 5, 4, is made perpetuall: provided it ſhall not extend to records or proceſſes

ceſſes in *Wales*, or whereby any perſon is outlawed.

Stat. 8. *H.* 6. 12. No judgment or record ſhall be reverſed or annulled for error aſſigned by reaſon of the raiſing of interlining of any record, proceſſe, warrant writ, pannel, or return, or any addition, ſubſtraction or diminution of words, letters, titles, or parcel of letters found in the ſame.

The Judges may reform all defects in any record, proceſs, Word, Plea Warrant, Writ, Pannel, or Return (except Appeals, Indictments of Treaſon, or Felony, and the Outlawries of the ſame, and the ſubſtance of the proper names, ſirnames and addition, left out in original Writs, Exigents, and in other Writs of Proclamation, contrary to the Statute of 1 *H.* 5. 5.) ſo as by ſuch miſpriſion of the Clerk no Judgment ſhall be reverſed, or annulled, Variance alledged between a Record, and the Certificate thereof ſhall be amended by the Judges.

Stat. 8. *H.* 6. 15. The Juſtices may amend the miſpriſions, defaults of Clerks of the Court, or of Sheriffs and their Clerkes, and of all other Officers whatſoever, found before them in any record, proceſs, or the return of the ſame, by reaſon of writing one letter or ſyllable too much or too little, except in records and proceſſes within *Wales*, and of felonies and treaſons, and the dependances of the ſame.

Stat. 27. *El.* 5 After demurrer joyned and entred, the ſame court amended all imperfections, defects, and wants of form other than thoſe onely, which the party demurring ſhall particularly expreſs in his demurrer. Howbeit, his Act ſhall not extend to the proceedings in an appeal of felonie or murder, or upon an indictment, preſentment, or penal Statute.

RULE 8. *Weſtm.* 2. 39. 13 *E.* 1. Damages given againſt the Sheriff, if he return not at all, or return a *tarde*, upon writs delivered, or offerd to be delivered him by bill;

bill: ſo upon returning a *Mandavi Baliво libertatis* falſly: Upon any reſiſtance of anv great man to execute the Kings precepts, the Sheriff ſhall take the *Poſſe comitatus*, and ſee it ſerved: See 2 *E.*3.5.

The Stat. of York 5.12. *E.*2. Bailiffes of Franchiſes muſt deliver their returnes of writs to the Sherifis by Indenture, and if he change the return, the Lord of the Liberty, and the party ſhall recover double damages: Sheriffs and Bailiffs ſhall ſet their proper names to all returnes.

Stat. 27. *El.* 12 Every Under-Sheriff, Bailiff of Franchiſe, Deputy, Clerk of the Sheriffe, &c. muſt take the oath of Supremacie, and another oath for the true ſpeedy and indifferent retuning of writs, and impanelling of Jurors, without taking above the fees allowed.

*Stat.*29. *El* 4. No Sheriffs, Under-Sheriff, Bailiffe of a libertie, or any of their Deputies ſhall either directly or indirectly take more for ſerving an extent or execution, then after the rate of 12*d.* for every ponnd under 100*l.* and 6*d.* for every pound above 100*l.* of what they ſhall ſo levy, in pain to forfeit treble damages to the party grieved, and beſides 40*l.* to be divided betwixt the Queen and the proſecutor.

RULE 11. *Stat.* 1. *E* 34. *Stat.*1. Averment given in a writ of falſe judgment againſt the record certined.

RULE 26. Trinity Term ſhall begin the monday after Trinity Sunday for keping of Eſſoines, Proffers, Returnes, &c. the full term ſhall begin the Friday after *Corpus Chriſti* day, and have four returnes onely, *Craſtino Trin. Octabis Trin. Quindena Trin.* and *Très Trin.* the reſt are cut off: alſo by a late Act the two firſt Returnes of *Michaelmas* Term are abridged.

RULE 37. 18 *H.*6.1. The Kings Letters Patents muſt bear date the day of the delivery of the warrant to the Chancellor, and not before, otherwiſe they are void.

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Stat. 3.4. *E.* 6.4 Every one that hath any Intereſt in any land or office by or under authority of the Kings Letters Patents (made after the fourth of *February* 27. *H.* 8.) may make his title, plea, avowrie, &c. as well againſt the King as any other by an exemplification (or *Conſtat*) under the great Seal.

Stat 13. *El.* 6. So likewiſe of the Patentees of *H.* 2. *E.* 6. *Qu. M. P. & M.* and *Qu. Eliz.* and all claming under them.

RULE 49. *Stat.* 14. *E.* 3.8. Eſcheators ſhall not continue in their office above a year.

RULE 51. *Mag. Cart.* 35. The Sheriffe ſhall make his turn throughout the Hundred but twice a year *viz.* once after *Eaſter*, and once after *Michaelmas*: And the view of Frank pledge ſhall alſo be made at the turn of *Michaelmas*.

Stat. 31. *E.* 3. *Stat.* 1. 15 Every Sheriffe ſhall hold his turn yearly, one time within the month after *Eaſter*, and another time within the month after *Michaelmas*, in pain to loſe his turn for the time.

Stat. 1. *E.* 3. *Stat.* 1. 17, Indictments in Sheriffs turns muſt be by rolls indented, one part thereof to remain, with the Endictors, the other with the Sheriff.

Stat. 1. *E.* 4.2. Upon Indictments and preſentments taken before Sheriffs, or their Miniſters at their turns or Law dayes, they ſhall not attach, arreſt, or Impriſon, nor levie any fine or amerciament of any perſon ſo indicted (or preſented) but deliver the ſame Indictments or preſentments to the Juſtice of peace of the ſame County, at their next Seſſions who ſhall proceed hereupon, as if they were taken before them.

Stat. 1. *R.* 3. 4. None ſhall be returned upon a pannel of inquirie for the Sheriffs turn, but men of good name and fame, having within the ſame County Freehold land to the yearly valve of 20 *s.* or Copihold land

to

to the yearly value of 26*s.* 8 *d.* and every Indictment otherwiſe taken ſhall be void.

RULE 55. *Weſtm.* 1. 10. 3 *E.* 1. Coroners ſhall be choſen in all counties of the moſt wiſe & diſcreet Knights: Sheriffs ſhall have Counter parts with the Coroners of all things, which concern their office: they ſhall take nothing of any man to do their office, in pain of great forfeiture to the King.

Stat. 14. E. 3. *Stat.* 1. 8. A Coroner ſhall have ſufficient in the County, whereof to anſwer all people.

Stat. 28. E. 3. 6. Coroners ſhall be choſen in the full Counties of the moſt convenient and lawfull men, ſaving unto the King and other Lords (that may make Coroners) their Franchiſes.

Stat. 1. *H.* 8. 7. where one is ſlain by miſadventure, the Coroner ſhall execute his office without fee, in pain of 40 *s.* Juſtices of *Aſſize* and Peace have power to enquire of and puniſh the defaults and extortions of Coroners.

RULE 57. *Artic. ſuper cart.* 3. 28 E. 1. They ſhall not hold plea of any contracts or covenants, but ſuch as one of the Kings houſe maketh with another of the ſame houſe: Nor of any treſpaſs, unleſſe the party were attached, and the plea determined before the Kings departure from the place, where the treſpaſs was committed, Any thing attempted here againſt is void: Pleas of felonie (that cannot be determined before the Steward, becauſe the felons cannot be attached, or for other like cauſe) ſhall be referred to the common law.

Stat. 5 *E.* 3. 2. & 10 *E.* 3. 2. *Stat.* 2. *I.* Inqueſts ſhall be taken by the men of the country about, & by none of Kings houſe, except it be in Covenants, contracts & treſpaſſes, when either party is of the Kings houſe.

Stat. 13. *R.* 2. *Stat.* 1. 3. The juriſdiction of the Steward

ard and Marſhal of the Kings houſe ſhall extend no further than twelve miles from the Kings Lodging.

Stat 15. *H.* 6. 1. The defendants may aver, that themſelves and the Plaintiff (at the time of the Suit commenced) were not of the Kings houſe againſt the Record.

Stat. 33. *H.* 8. 12. The Lord Steward of the Kings-houſe alone or (in his abſence) Treaſurer and Controller of the Kings houſe with the Steward of the Marſhalſie or two of them (whereof the Steward of the Marſhalſie to be one) may without Commiſſion hear and determine all Treaſons, Murders, Man-ſlaughters and blood-ſhed within the Kings houſe, although the King be removed before: the inquiring and verdict muſt be by the Kings houſhold ſervants in the check-roll: No Clergie or Sanctuary is given to any found guilty before them.

RULE 60. 17. *E.* 4. 2. *made perpetual* 1 R. 2. 6. No Plea ſhall be holden in court of Pipowders, unleſs the Plaintiff or his Attorney ſwear, that the matter of the declaration was done in the time of the ſame Fair, and within the Juriſdiction thereof, but that oath ſhall be no concluſion to the defendant, but that he may plead as he might before, Every Steward holding plea otherwiſe, forfeiteth 5 *l.*

CHAP. 23.

RULE 2. *Glouceſter* 8. 6 *E.* 1. Attorneys may be made in all pleas, where appeales lie not.

Merton 10. 20. *H.* 3. in ſuits at the Countries Court, Hundred, Weapontake, or Lords court.

Weſtm. 2. 10. 13. E. 1. An Attorney may be made in all Counties, where Juſtices do journey, and *Stat.* 3. *H.* 7. 1. An appeal of death may be purſued by Attorney.

Weſtm.

*Weſtm.*1.25.3. E.1.*Weſtm.*2.49,13 E.1. and *Artic. ſuper Cart* 11.28.*E* 1 there ſhall be no maintenance in ſuits.

Stat. 32.A. 89. None ſhall buy, ſell, or get or take promiſe, or grant to have any pretended rights or titles to lands, except the ſeller, or thoſe, by whom he claimeth were in poſſeſſion, or took the profits, by the ſpace of a year next before upon pain that the ſeller, &c. ſhall forfeit the value of the land, and likewiſe the buyer, knowing the ſame, provided, he that is in lawfull poſſeſſion by taking the yearly profits, may by &c. anothers pretended right, &c.

RULE 7. *Stat.*6 *R.*2.2. Debt, accompt, and all ſuch actions ſhall be brought in the county where the contract, &c. was made.

RULE 16. *Stat.*1.*E.* 6 7. The Acceptance of a new name of dignity ſhall not abate the writ.

CHAP. 24.

RULE 6. *Merton* 8. 20 *H* 3. Seiſin of ones Anceſtor in a writ of right ſhal be from the time of H 2.

In a Mortdanceſter, writ of Nief,, and of entry, from the laſt return of King *John* out of *Ireland.*

In an aſſize of *novel diſſeiſin,* from *Henry* 3. his firſt paſſage into *Gaſciogne.*

*Weſt.*1.3 8.3 *E.*1.Seiſin of ones anceſtor in a writ of right ſhall be from the time of *Richard* the firſt.

In an Aſſize of *novel diſſeiſin,* and *Nuper obiit,* from *H* 3. his firſt paſſage into *Gaſcoigne.*

In a Mortdanceſter Coſinage, Aywel, entry and writ of Niefe, from H 3. his Coronation.

*Stat.*32 H. 8.2. Seiſin in writ of right,ſhall be within 60 years.

In a Mortdanceſter, or any other poſſeſſory action (upon the poſſeſſion of his anceſtor or predeceſſor) ſhall be within 50 years.

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A writ of the poſſeſſion of the Plaintiff himſelfe ſhall be within 30 years.

An avowry or cognizance, for rent, ſuit, or ſervices of the ſeiſin of his Anceſtor, or of his own, ſhall be within 40 years.

Formedons in reverter or remainder, and *Scire facias* upon fines ſhall be ſued within 50 years, after the title or cauſe of action accrued.

Stat. 1. *M.* 1. *Parl.* 2. *ſeſſ.* 5. The ſtatute of 32 *H.* 8. 2. ſhall not extend to a writ of right of advowſon, *Quare impedit*, Aſſize of *Darrein* preſentment, *Jure patronatus*, writ of right of ward, writ of raviſhment of ward nor to the ſeiſer of the wards body or Eſtate: but the time of the ſeiſin to be alleaged in ſuch caſes ſhall be as it was in the Common Law, before the making of the ſaid ſtatute.

Stat. 21. *Fac.* 2. The time of preſcription for lands concealed from the King is ſixty years before the making of that ſtatute.

Satut. 1 *Fac.* 6. In writs of Formedon in deſcender, remainder and reveter, and right of entry, the time is 20 years after accruer, and imperfections removed.

RULE 6. *Stat.* 25 *E.* 3. *Stat.* 5. 16. Non-tenure ſhall not abate the writ, but onely for the quantity.

Stat. 37 *E* 3. 17. No writ ſhall be abated by acknowledgment of villeinage, if the demandant or Plaintiffe will aver, that he that alleadgeth the exception was freed the day of the Writ purchaſed.

CHAP. 26.

RULE 4. WEſtm. 2. 2. 13 *E.* 1. A *Cui in vita* given to the wife after her husbands death, upon his loſing of the land by default, and the Tenant that recovered againſt the husband muſt maintain his own right.

CHAP. 27.

RULE 4. *Weſtm.* 2. 20. In a writ of Coſinage Ayel, and Beſael, the point ſhall be inquired, whether the demendant be the next heir, as well as in a Mortdanceſtor,

RULE 10. *Weſtm.* 2. 1. 13. *E.* 1. A formedon in *Deſcender* is alſo given by this Statute to the heir in tail upon a deſcent from his Anceſtor dying ſeiſed of the eſtate tail.

RULE 12. *Merton* 120 *H.* 3. A woman deforced of her dower or *Quarentine*, ſhall (in a writ of dower) recover damages, *viz.* the value of her Dower from her husbands death to the day of the recovery of her Dower, and the deforceor ſhall be amercied.

Weſtm. 1. 48. 3. *E.* 1. A writ of Dower *unde nihil habet* ſhall not abate, though ſhe have received part of her Dower before the writ purchaſed, unleſſe it were of the ſame party, againſt whom the writ was brought, and in the ſame Town.

Weſtm 2. 4. 13 *E.* 1. In place of a writ of right a *Quod ei deforceat* is given to tenant in Dower for life, by the courteſie, in Frank-marriage, and in tail, upon loſing by default.

CHAP. 28.

RULE 2. *Marlebr.* 7 52. *H.* 3. In a writ *de communi Cuſtodia*, if the deforceor come not at the grand diſtreſſe, the writ ſhall be renewed as often as may be within half a year, and every time read and claimed in the county-court; and if he come not in to anſwer, nor the Sheriffe find him within that halfe year, he ſhall loſe the ward ſaving

his

his action another time, if he have right.

Weſtm. 2. 35. 13. *E.* 1. In a writ of ward of land or heir, or both, either of the parties dying before the plea determined, a re-ſummons ſhall be; And in the grand diſtreſſe day muſt be given, that three County dayes may be held before the returne, in every of which Proclamation ſhall be made, whereupon if the defendant appear not, judgement ſhall be given for the Plaintiff: ſaving the right of the defendant, if afterwards he will claim it: So ſhall it be done alſo in a writ of ejectment of ward.

RULE 6. *Weſtm.* 2. 2. 13 *E.* 1. If the tenant diſclaim in the County-Court, or other Court not of Record the Lord may remove the plea before the Juſtices to cauſe it to be of Record; ſo as he may have a writ of right *ſur diſclaimer.*

Gloceſter 4. 6 *E.* 1. *& Explanat.* 4 When land is given in Fee-farme, rendering or doing ſo much as amounteth to the fourth part of the value of the land, if he (whoſe land is charged) let it lye freſh by two years, ſo as no diſtreſſe can be found in it, nor render or do that which is contained in the writing, the other ſhall recover the land by a *Ceſſavit*; but the tenant coming before judgment, if he render the arrerages and damages and finde ſufficient to do from thenceforth that which is contained in the writing, ſhall retain his land *Weſtm.* 2. 21. 13 *E.* 1. If a man detain from his Lord his ſervice due, by two years the Lord ſhall recover the land by a *Ceſſavit*: This lyeth alſo for the Lords heir, againſt the tanant, his heirs and Alience.

Weſtm. 2. 41. If religious houſes, that have land given, &c. withdraw the Almes, &c. by two years, the donor ſhall have the like action.

CHAP. 29.

RULE 7. *Marlb.* 9. 52 *H.* 3. The proceſſe in a *Secta ad molendinum* is attachment, *venire facias*, and the grand diſtreſſe: *See alſo there the order of proceeding in that action.*

RULE 9. *Stat.* 25 *E.* 3. *Stat.* 3. 3. The Kings Collation to a benefice (being found before Judgement to be untrue) ſhall be repealed.

Marlbr. 12. 52 *H.* The proceſſe in a *Quare impedit* ſhall be Summons, Attachment, and Grand diſtreſſe.

Weſtm. 5. 13 *E.* 1. A Coparcener being diſturbed (after Partition) ſhall have a *Scire facias*, and ſhall not be put to a *Quare impedit.*

If tenant in Dower, or by the courteſie have preſented, the reverſioner being diſturbed ſhall have a *Quare impedit* or *Darrein* preſentment at his pleaſure.

RULE 15. *Weſtm.* 2, 9. The *Meſne* not coming in to acquit the tenant loſeth the ſervice, and the tenant ſhall have like remedy againſt the Lord for exaction as the *Meſne* might have had: And there ſee the proceſſe and proceeding to be uſed againſt the *Meſne.*

RULE 21. *Stat. de finibus* 18 *E.* 1. *Stat.* 4. After the writ original is delivered in the preſence of the parties before the Juſtices, the pleader ſhall ſay, Sir Juſtice *Conge d' accorder*, then the Juſtice ſhall ſay, what ſaith Sir *R?* And when the Kings fine is agreed for; and the peace cried, the Pleader ſhall declare the ſubſtance of the fine: the parties ought to be of full age, of *ſane memorie*, and out of priſon: A *feme-covert* muſt be examined before four Juſtices, and without her conſent the fine cannot be levied.

Stat. de finibus levatis. It ſhall be no good exception, that before and at the time of the fine levied the demandant

mandant or his anceſtors were ſeiſed of the land contained in the fine, or of ſome part thereof: Fines ſhall be openly read at two certain dayes in the week by the diſcretion of the Juſtices, and in the mean time all pleas ſhall ceaſe.

Stat. 5 *H.*4.13. Every writ of covenant, All other whereupon Fines are levied, the *dedimus poteſtatem*, and all knowledges of the ſame, before they be drawn out of the Common Bench by the *Chirographer*, ſhall be inrolled in a Roll to be of Record for ever, out of which execution ſhall be had, if the Notes and Fines be imbezelled.

Stat. 23 *El.* 3. Every writ of Covenant, All other writs, whereupon any fine is levyed, the Return thereof, the Concord, Note, and Foot of the fine, the Proclamations, and the Qeens ſilver, alſo every writ of Entry in the *poſt*, and other writ, whereupon any common recovery is ſuffered, writs of Summons *ad Warrantizandum*, and the returne of all theſe writs, and every warrant of Attorney, may at any mans requeſt be inrolled, which Inrolment ſhall be of as great force to all purpoſes in law, as the things themſelves, if they were extant: No Fine, Proclamation, or common Recovery ſhall be reverſed by writ of Errour, by reaſon of falſe Latine, Razure, Interlining, miſ-entring of the warrant of Attorney, or of any Proclamation, or by reaſon of any other defect of form in words, and not in matter of ſubſtance.

RULE 22. *Stat.* 34 *E.*3.16. The plea of non claim of Fines ſhall be no barr hereafter.

Stat. 4 *H.*7.24. Every fine after the ingroſſing ſhall be proclaimed in Court the ſame Term, and the three next, four ſeverall dayes in every Term, all pleas ceaſing the whilſt: The Proclamations being ſo made, The fine ſhall conclude all privies and ſtrangers, except

women *Covert*, perſons within 21 years of age, in priſon, out of the Realm, or of *non ſane* memory (being no parties to the fine) ſo as they or their heirs take their action or lawfull entry within five yeares after thoſe imperfections removed: ſaving to all perſons and their heirs (other then parties) the right, claim, and intereſt, which they have at the time of the fine, ſo as they purſue it by action or lawfull entry within five years next after the proclamations; And ſaving to all other perſons ſuch right, title, claim and intereſt, as firſt ſhall grow, remain, or come to them after the Proclamations by force of any matter before the fine, ſo as they take their right according to the Law within five years, next after it ſo growes, &c. And thoſe, that be *Covert-baron*, &c. at the time when it groweth, that they or their heirs take their action or lawfull entry within five years after thoſe imperfections removed: ſaving alſo to all (not parties or privies) the exception that none of the parties, or any to their uſe, had any thing in the land at the time of the fine.

Stat. 1 *M. Parl.* 1.7. All Fines whereupon Proclamations be not or ſhall not be duly made (by reaſon of the adjournment of any term by writ) ſhall be as good as if any term had been holden from the beginning to the end, and proclamations therein made according to the Statute.

Stat. 31. *El.* 2. Proclamations of Fines ſhall be only four times, *viz.* once in the term, wherein the Fine is ingroſſed, and once in every of the three termes next after.

CHAP. 30.

RULE 2. *Mag. Cart.* 12.9 *H* 3. Aſſiſes of Mortdanceſter and *novel-diſſeiſin* ſhall not be taken but in their proper County by the

the Juſtices of Aſſize, and if they cannot be determined there, they ſhall be determined by the ſame Juſtice in their Journy: Alſo difficult matters ſhall be referred to the Juſtices of the bench to be there determined.

*Weſtm.*1.24 3.*E.*1. An Aſſize given againſt an Eſcheator, Sheriff, or other Bailiffe of the King, that ſeiſeth any lands by colour of his office, without ſpecial warrant; and double damages to be recovered by the partie greived.

*Weſtm.*2.25.13.*E.*1. An Aſſize of *novel diſſeiſin* ſhall lie for eſtovers of wood, profit to be taken in woods, a Corrody, delivery of Corn, and other victuals and neceſſaries to be received yearly in a certain place, toll tronage, paſſage, Pontage Pawnage, and the like to be taken in places certain, the keeping of Parks, Woods, Foreſts, Chaſes, Warrens, Gates and other Bayliwicks, and Offices in fee; And in all theſe caſes the writ ſhall be, *de libero tenemento*: All an Aſſize is given for common of turbarie, fiſhing and ſuch like Commons appendant to a freehold, or without a freehold by ſpecial deed (at leaſt) for term of life.

If any holding for years or in ward alien in fee, remedie ſhall be had by an Aſſize, and both the feoffers and feoffees ſhall be had for diſſeiſors, ſo that during the life of any of them the ſaid writ ſhall hold place; but if they die the remedie ſhall be by writ of entry.

The giving of this writ in new caſes ſhall not diminiſh the force thereof in thoſe, wherein it had force before, and remedie alſo ſhall be had thereby, in caſe where on feedeth in the ſeveral of another.

In this ſuit, if the defendant fail to make good the exception, which he pleads, he ſhall be adjudged a diſſeiſor without taking the Aſſize, and ſhall give to the Plaintiffe double damages both inquired, and to be inquired; and beſides ſhall ſuffer a years Impriſonment

If ſuch an exception ſhall be alledged by a Bayliff, the taking of the Aſſize ſhall not be thereby delayed, nor yet the Judgement upon the reſtitution of the land and damages: Howbeit, if the Maſter of ſuch Bailffe afterwards offer to prove to the Conrt by matter of Record, that there was Juſt exception, whereby the Plaintiff might have been barred, he ſhall have a *venire facias*, to produce ſuch record. And then, if the Juſtices ſee cauſe, the Plaintiff ſhall be warned to appeare at a certain day, and the defendant ſhall then have again his ſeiſin and damages, and the plaintiff ſhall be puniſhed by Impriſonment at the diſcretion of the Juſtices: In like manner alſo ſhall the Juſtices proceed, in caſe the defendants proof is by deeds and releaſes; for if the plaintiff purchaſed the Aſſize contrary to his own deed, he ſhall be puniſht as aforeſaid.

Stat. 7 *R.* 1. 10. An Aſſize of *novel diſſeiſin* for rents iſſuing out of lands in divers Counties ſhall be taken *in conſinio comitatus*, as is uſed for Comon of Paſture in one County, appendant to tenements in another.

Stat 1 *H.* 4. 8. A ſpecial Aſſize is maintainable by the diſſeiſee for ſuch lands, as are granted by the Kings patent, without title firſt found by inqueſt for the King, without ſuit to be made to the King in that behalfe; And if the patentee pray in *Aide* of the King, a *procedendo* ſhall alſo be granted without ſuit.

Here if the Aſſize paſſe for the diſſeiſee, he ſhall recover treble damages againſt the patentee.

Stat. H. 4 8. If any make forcible entry into lands by way of mantenance, the Chancellor of England ſhall grant a ſpecial Aſſize without ſuing to the King, and if the deſſeiſor ſhall be attainted thereof, he ſhall ſuffer one whole years impriſonment, and reſtore double damages to the party grieved.

Stat. 21 *H.* 8. 3. The plaintiff in Aſſize may abridge his

his plaint of any part, whereunto a bar is pleaded without prejudice to the reſidue.

Merton 3.20 *H.*3. A man diſſeiſed recovering his ſeiſin by Aſſize of *novel diſſeiſin*, or confeſſion of the party, and having the ſame delivered him by the Sheriff, if he be again diſſeiſed of the ſame tenements by the ſame diſſeiſor, he ſhall have a writ of rediſſeiſin to command the Sheriff (taking with him the keeper of the pleas of the Crown, and other Knights) in proper perſon to go to the land, &c. and by the firſt Jurors or other lawfull men to make inquiry: Howbeit, this muſt not be without ſpeciall commandment of the King: The *rediſſeiſor* ſhall be impriſoned.

*Marlbr.*8. 52 *H.*3. And not delivered without ſpecial command of the King, and payment of a Fine.

*Weſtm.*2.8.13 *E.*1. Writs of *Rediſſeiſin* muſt be inrolled in the Chancery, and tranſcripts thereof ſhall be ſent into the *Exchequer*.

Weſtm. 2.26. A writ of *Rediſſeiſin* ſhall lie for them that have recovered by default, reddition, or otherwiſe, without recognition of aſſizes or Juries: The *rediſſeiſor* ſhall anſwer double damages, and not be repreviſable by common writ.

RULE 8.*Weſtm.*2.24. 13 *E.* 1. Giveth an aſſize of nuſance againſt him, to whom the tenement is alienated after the nuſance is made.

Stat. 6 *R.*2.3. The Plaintiff, if he will, may have a writ of nuſance in the nature of an Aſſize, determinable before the Juſtices, or before the Juſtices of Aſſize.

RULE 9. *Magn. Cart.*12. *Vide ſupra RULE* 2.

Marlbr. 16.52 *H.*3. If the Lord will not render unto the heir the land(when he comes to age) without plea, the heir ſhall recover his land by an Aſſize of Mortdanceſtor, together with all his damages.

Weſtm, 2.4.13 *E.*1. If a woman having no right, recover

yet Dower againſt a Guardian, the heir at full age ſhall have a Mortdanceſter againſt her.

Glocester 3. The heir ſhall have an Aſſize of Mortdanceſter, if the tenant by courteſie alien, and leave no Aſſets.

Glocester 6. All the heirs, whereof one is Son or Daughter, Brother, or Siſter, Nephew or Niece, and the other in a further degree, ſhall joyn in a Mortdanceſter.

RULE 10. *Mag-Cart.* 13. An Aſſize of *Darrein* preſentment ſhall be alwayes taken before the Juſtices of the Common place.

RULE 11, *Weſtm.* 2. 24 13 *E.* 1. A writ of *Furis utrum* ſhall be granted, to try whether free almes belong to one Church or another, in caſe where they are transferred from one Church to another.

RULE 13. *Stat.* 31 *H.* 8 1. Joyntenants and tenants in Common of an eſtate of Inheritance in their owne right or in the right of their wives in any Mannors, Land, &c. may be compelled to make partition by writ *de partitione facienda*, as Coparceners are Compellable to do, and afterwards ſhall have aid to deraign the warranty paramount, and to recover *pro rata*, as Coparceners (after partition) ſhould.

Stat 32 *H.* 8. 32. Jointenants and tenants in common, that hold for life or years amongſt themſelves, or with others, that have Inheritance or freehold in any Mannors, lands, &c. ſhall alſo be compelled to make partition by the ſaid writ to be purſued upon their caſe. Howbeit, ſuch partition ſhall not be prejudical to any but the parties, to ſuch partition their executors and aſſignes.

CHAP.

CHAP. 31.

RULE 3. *Stat.* 9*E.*3. *Stat.* 1.3. In a writ of debt brought againſt divers executors, they ſhall have but one Eſſoine before appearance, and another after appearance, he or they that do firſt appear in the Court at the grand diſtreſſe, ſhall anſwer to the Plaintiff, and the plaintiff (if it paſſe for him) ſhall have judgment and execution of the goods of the Teſtator againſt all named in the writ, as well as if they had all pleaded.

RULE 7. *Mag. Cart.* 8.9. *H.* 3. The pledges ſhall be free ſo long as the principal debtor is ſufficient; And they anſwering the debt, ſhall have the Lands and rents of the principall, untill they be ſatiſfied: but *note, that this is meant of the Kings debtor.*

Stat. 1 *K.*2. 12. No Warden of the Fleet ſhall ſuffer any priſoner in execution to go out of priſon by Mainprize, Bail, or *Baſton*, without making gree with the party, unleſſe by writ, or other commandement of the King, upon pain to loſe his Office, and the Creditor to have a writ of debt againſt him.

Stat. 23 *H.*6. 10. Every Obligation taken by a Sheriff or his Miniſters by colour of their office of any perſon in their Ward by courſe of Law, ſhall be by the name of their office, and upon condition, that the priſoner appeared at the day and place mentioned in his Writ, Bill, or Warrant, an Obligation in any other form taken is void.

Stat. 32 *H.*8 37. The Executors and Adminiſtrators of him, that hath any rent or fee-farm in fee-ſimple, fee-tail, or for life, ſhall have an action of debt for the arrerages in the Teſtators life time, againſt the tenants, that ſhould then have paid it, or may diſtreine

(and

and make avowrie upon their matter) in the lands, ſo long as they remaine in the poſſeſſion of the ſaid tenant, or of any claiming onely from him.

A husband ſeiſed of any ſuch eſtate in any rent or fee-farm in his wives right, ſhall (after her death) himſelf (& alſo his executors, or adminiſtrators) have the ſame remedy for arrerages due in her life: So likewiſe of him, (his executors, or adminiſtrators) that hath a rent or fee-farme during anothers life, and *Ceſty qui vie* dye, the ſame being unpaid.

RULE 9. *Stat.* 13 *El.* 4. The lands, profits, and hereditaments of every Accomptant, or him that receiveth money for the Queen, or her ſucceſſors to be imployed to the uſe of the Queen, &c. ſhall be extended (in the nature a Statute ſtaple) for the payment of the arrerages: Or the Queen, &c. if he do not ſatisfy within ſix moneths after the arrerages found, may ſell his land, and the party may have the ſurpluſage to be delivered to him by him that received the money upon the ſale, without further warrant: This ſale to be of any land, whereof it is found by inquiſition, that the Accomptant taketh the profits; which inquiſition, if it be not true, after traverſe of the office, and that found for him, he ſhall have his land againe without any petition, livery, or *Ouſter le main*: Here, if any ſuch buy land with the Queens treaſure, and pay not the arrerages, as before; the Queen ſhall ſeiſe and retain the land, according to the rate that the party had it.

This Act extendeth not to ſuch officers as have uſed to disburſe money immediatly after their accounts paſt, as the treaſurers of War, Garriſons, Navies, &c. unleſſe the Queen, &c. command preſent pay: Neither doth it extend to Accomptants, whoſe whole Receipt exceedeth not 300*l.* nor to Sheriffs, Eſcheators, or Bailiffs of Liberties.

The

The Queen, &c. being ſatisfied by ſale of land, the ſureties ſhall be diſcharged for ſo much, and if any remain yet unpaid, the ſureties ſhall pay the reſidue ratably according to their abilites.

Stat. 27 *El.*3. The Queen, &c. may make ſale of the accomptants lands, &c. as well after his death as in his life time, and as well where the accompt was made, and the debt known within eight years after his death, as in his life time. Provided, that after the Accomptants death and before the lands be ſold, a *ſcire facias* ſhall be awarded to garniſh the heir, to ſhew cauſe why the lands &c. ſhould not be ſold, &c. whereupon, if the heir upon ſuch Garniſhment or two *nihils* returned do not prove unto the Court, that the executors or admiſtrators of the accomptant have ſufficient, then ten months after ſuch two *nihils* or garniſhment returned, the lands, &c. ſhall be ſold and diſpoſed according to the *Stat.* of 13 *El.*4. Nevertheleſs, the heirs ſale *bona fide* and upon good conſideration before the *ſcire facias* awarded, ſhall be good to him, that is not conſenting to defraud, the Queen, &c.

This Act ſhall extend to all Officers of Receipts and Accompts to the Queen, and to none other. The heirs lands, &c. ſhall not be ſold during his minority but at any time within eight years after his full age they ſhall be liable as aforeſaid: if the Accomptant or debtor had a *Quietus eſt* in his life time, that ſhall diſcharge the heir of debt.

Stat. 7 *Fa.*15. No debt ſhall be aſſigned to the King, &c. by any debtor or accomptant, other then ſuch debts as did before grow due originally to the Kings debtor or Accomptant *bona fide*: All Grants and Aſſignments of debts to the King, &c. contrary to the true intent of this Act ſhall be void.

RULE 15. *Marlbr.* 23. 52 *H.*3. Attachment given in an

an Action of Accompt againſt Bayliffs, that withdraw themſelves, and have no land, or tenements to be diſtrained by.

*Weſtm.*2.11.13.*E.*1. He to whom the accompt is to be made, may aſſign Auditors to take it, who may immediately commit to the next Goale the Accomptant (being found in arrerages) till he fully ſatisfie; whereupon the Accomptant finding himſelf grieved, may bring the matter by a *ſcire facias* before the Barons of the Exchequer.

CHAP. 32.

RULE 22. WW *Eſtm.* 1-20 3.*E.*1. Treſpaſſers in parks and ponds attainted at the ſuit of the party (beſides making large amends according to the treſpaſs and fine at the Kings pleaſure) ſhall have three years impriſonment, and finde good ſurety not to commit the like treſpaſſe; And if he cannot finde ſurety, he ſhall abjure the Realm. Being a fugitive and having no lands or tenements, whereby to be juſtified, he ſhall be proclaimed from county to county; and (if he appear not) outlawed.

*Stat.*5.*R.*2.7. None ſhall enter into lands or tenements by force, in pain of Impriſonment and ranſom at the Kings pleaſure.

Stat. 15.*R.*2.2. When forcible entry is made into lands or Church-livings, one or more Juſtices of peace, taking ſufficient power, and going to the place ſo kept by force may commit the offender to the next Goal, there to remain convict by the Juſtices record, till he hath made fine and ranſom to the King; and herein the Sheriffe and all others ſhall be aſſiſtant, in pain of Impriſonment and great fines making.

Stat. 8.*H.*6.9. The Statute of 15 R.2.2 ſhall be duly put

put in execution both againſt forcible entry and forcible detainer, though the entry was peaceable.

When complaint of any ſuch entry or detainer ſhall be made to any ſuch Juſtice or Juſtices of peace, he or they by precept ſhall command the Sheriffe to ſummon a ſufficient Jury, and having by them made inquiry of the force committed, ſhall cauſe the tenements to be reſeiſed, and that as well in the abſence as preſence of the party offending. And here, the alienation of tenements (ſo entred into or detained by force) for maintenance, ſhall be adjudged void: Howbeit, this Act ſhall endamage none, where peaceable poſſeſſion hath been enjoyed three years.

Stat. 31. *El.* 11. There ſhall be no reſtitution upon an Indictment of forcible entry or detainer, where the defendant hath been three years next before in quiet poſſeſſion, and his eſtate therein ended.

Stat. 21. *Ja.* 15. Upon force or detainer, as aforeſaid, a Juſtice or Juſtices of peace have power to give reſtitution of poſſeſſion, as well unto tenants for years, by *Elezit*, Statute Merchant, or ſtaple, copiholders, or Guardians by Knight ſervice, as unto ſuch as claim freehold or Inheritance.

Merton. 6. 20 *H.* 3. A Lay-man raviſhing or marrying a ward within 14 years of age, ſhall be impriſoned, beſides loſſe of the value of the marriage.

Weſtm. 1. 35. 13. *E.* 2. A ſtrict Law againſt one that taketh away a Ward.

CHAP. 33.

RULE 2. MAgna Cart. 34. 9. *H.* 3. A woman ſhall have no appeal, but onely of the death of her husband.

Gloceſter 9. 6. *E.* 1. An appeal of the death a man muſt

muſt be brought within the year

Stat. 3 *H.* 7. 1. One acquitted upon an indictment of Murder or man-ſlaughter, or as acceſſory, ſhall not go at large without good bayl, untill the year and day be paſt, within which time an appeal may be brought (if no Clergy he had before) and all advantages therein ſaved, as if the acquittall had not been.

CHAP. 34.

RULE 17. & 18. *Weſt.* 2. 7. A guardian may have writ of admeaſurement of dower, howbeit the heir (at full age) ſhall not be barred by that ſuit, if the guardian did follow it faintly.

In writs of admeaſurement both of Dower and Paſture after the great diſtreſſe, proclamation ſhall be made two County dayes, whereupon if the party come the plea ſhall proceed, if not, admeaſurement ſhall be made in his default.

Weſtm. 2. 8. 13 *E.* 1. When the ſame party (after admeaſurement) another time ſurchargeth the Common, a writ to enquire of that ſecond ſurcharge ſhall go out either *Judiciall*, if the former admeaſurement were before the Juſtices, or other wiſe *Originall*, out of the Chancery, and the beaſts ſurcharging the Common, (or their value) ſhall be anſwered to the King.

RULE 24. &c. *Marlbr.* 21. 52 *H.* 3. The Sheriff may *replevin* beaſts not onely without but within a liberty alſo if the bayliff of the liberty will not do it.

Weſtm. 2. 2. 13 *E.* 1. The ſheriff or bayliff ſhall take pledges of the plaintiff before they make deliverance of the beaſts, not onely *de proſequendo*, but for return in them, if a return be adjudged, he that taketh pledge otherwiſe ſhall anſwer the price of the beaſts.

Upon

Upon a return awarded to the Defendant, the Writ *de returno habendo* ſhall have this Clauſe (that the Sheriff ſhall not deliver them without writ, wherein mention ſhall be made of the Judgment,) and thereupon he may (if he will) have a Judicial Writ to the Sheriff to deliver him the Beaſts: But if afterwards the Plaintiff deſire to replevy his Beaſts again, he ſhall have a *Judicial* Writ, (*viz.* a Writ of *ſecond deliverance*) that the Sheriff taking ſurety for the Suit, and alſo for the Beaſts to be returned or their price (if return be awarded) ſhall deliver the Beaſts before returned, and the Diſtrainer ſhall be attached to come before the Juſtices at a certain day; and if he that replevied make default, or for ſome other cauſe, return of the diſtreſs is awarded (being now twice replevied) the diſtreſs ſhall afterwards remain irreplevi-able.

Stat. 1. 2. *P. M.* 12. Every Sheriff of a Shire (being no City) ſhall at his firſt County-day, or within two months after the receipt of his Patent, proclaim in the Shire-Town four Deputies (at leaſt) dwelling not paſt 12 miles one from another, which in his name ſhall make *Replevins*, as the Sheriff might do himſelf.

RULE 30. *Stat.* 2. *E.* 3. 3. Commiſſions of *Oyer* and *Terminer* ſhall be only granted to the Juſtices of the one Bench or other, or to Juſtices *Errants*.

CHAP. 36.

RULE 1. *Stat de quo Warranto* 18. *E.* 1. Pleas of *quo warranto* ſhall from henceforth be pleaded and determined in the Circuits of the Juſtices. See alſo *Stat. de quo warranto novum.*

RULE 3. &c. *Stat.* 36. *E.* *Stat.* 1. 13. No Eſcheator ſhall take Inqueſts of office but indented between the Jurors and him, otherwiſe they are void.

Stat. 33. *H.* 8. 22. No Eſcheator ſhall ſit *virtute officii* (onely) to find an Office of Lands holden of the King, of 5 *l.* value or above, in pain of five pounds.

Stat. 8. *H.* 6. 16. No Eſcheator ſhall take Inqueſts but of people impannelled by the Sheriff, and thoſe Enqueſts muſt be returned within a month after the taking, in pain of 20 *l.* ſo alſo of Commiſſioners.

Stat. 23. *H.* 6. 17. An Eſcheator ſhall take an Inqueſt, *virtute brevis*, within a month after the delivery of the Writ unto him, his Fees are there alſo ſet down.

Stat 1. *H.* 8. 8. He ſhall not ſit, unleſs he have Lands, *&c.* to the clear yearly value of 40 Marks, in pain of 20 *l.* He ſhall not delay to take the Verdict, when the Jury offers it, in pain of 100 *l.* So alſo of Commiſſioners: He ſhall not be Eſcheator again within three years after that year ended.

Stat. 36. *E.* 3. *Stat.* 1. 13. A Traverſe is given to the party whoſe Lands are ſeized by Office of Alienation without Licenſe, or the Nonage of the Heir in Ward, it ſhall be ſent to the Kings Bench to be tried.

Stat. 69. *E.* 3. *Stat.* 1. 13. Upon a Traverſe of *Monſtrans de droit* the Chancelor may let him (that tenders it) the Lands holden to Farm, finding Surety to do no waſt.

Stat. 8. *H.* 6. 19. They ſhall not be let to Farm till the Inqueſts returned, nor within a month after, within which time the party grieved may have the benefit of the former Statute: All Letters Patents within the month ſhall be void.

Stat. 18. *H.* 6. 6. All Letters Patents made of Lands or Tenements before Office found and returned, ſhall be void.

Stat. 1. *H.* 8. 8. Divers good proviſions concerning Eſcheators Commiſſioners, Jurors, and Officers, and the manner of returning Offices into the *petty bag*.

Stat.

Stat. 1, *H.* 8. 10. Lands ſeiſed into the Kings hand by Office, ſhall be let to farm to him, that tendred to traverſe the ſame within three months after ſuch Office found, notwithſtanding the Statute of 8 *H.* 6. 16.

Stat. 2. 3 *E.* The Eſtates and Intereſts of others ſhall be ſaved, though they be not found in the Office where an heir of full age is found within age, he ſhall have a Writ *de ætate probanda*, and may proceed to ſue out his Livery or *Ouſter le main*, (as his caſe is) and receives the profits of his Lands, notwithſtanding ſuch Office found.

Where after the Kings Tenants death more Heirs than one are found, or if one be untruly found a *Lunatick Ideot*, or dead, the party grieved may have his Traverſe, as in other caſes of untrue Inquiſitions. A Traverſe of *Monſtrans de droit* is given without petition, though the King be titled by double matter of Record.

When the Jury finds *de quo vel de quibus Ignorant*, or *per quæ ſervitia ignorant*, the firſt ſhall not make a Tenure of the King, nor the laſt Tenure in *Capite*; but in ſuch caſes a *Melius inquirendum* ſhall iſſue forth traverſe given to an Office where a wrong Tenure is found: The Rents of mean Lords ſhall be paid (during the nonage of the Ward) by the Officer, that receives the Revenue of the Wards Lands.

Artic. de ſuper cart. 19. 68. *E.* 1. When the Sheriff or Eſcheator ſeize Land into the Kings hand without cauſe, upon ouſting of the Kings hands, the party ſhall have the Meſne Iſſues.

Stat. de Eſcheatoribus. 29. *E.* 4. 3. If the Eſcheator by writ out of the Chancery ſeize Land into the Kings hand, and after upon Inquiſition no Title is found for the King to have the Cuſtody, an *Ouſter le main* ſhall be awarded for the party out of the Chancery: Provided, that if any thing afterwards may be found in the Chancery,

Exchequer, or K. Bench for the King, a *scire facias* shall go out against the party, and if the King have right, he shall be answered of all the Issues from the time of the Escheators first seising of the Land.

Stat. 23. *H.* 6. 17. In a *scire facias* upon a Traverse against any Patentee, no protection shall be allowed.

RULE 11. *Stat.* 8. *E.* 3. 4. The Rents given to them that sue Livery, when the Rent day commeth, how soon soever it commeth after the Livery.

Stat. 32. *H.* 6. 46. The erection of the Court of Wards. And *Stat.* 33. *H.* 8. 22. The annexing thereunto the Liveries: See *the Statutes at large.*

RULE 31. Also for the better preservation of the Peace, divers wholesome Laws began to be framed from the beginning of the Reign of *E.* 3. for the establishing of Justices of Peace in every County, until at last about the 12 year of R. 2. they were fully settled, and had power to keep their Quarter-Sessions; which Government Sir *Edward Cook* hath observed to be the best in the Christian World for the preservation of the Peace: And therefore see those Statutes, as you shall find them ranked together in divers Books now extant.

RULE 33. Concerning Informations there are divers good Laws made, which are now sorted together (under the Titles of *Actions Popular* or *Informations*) in divers Treatises, which treat of the Office of a Justice of Peace; and therefore it is conceived needless here to insert them.

RULE 34. See *Officium Coronatoris*, 4. *E.* 1. Which setteth down the whole order how he is to proceed upon Inquiries: See also *Stat. de Exonia*, 14. *E.* 1. and the Articles thereunto annexed.

Artic. super Cart. 28. *E.* 1. The Coroner of the County shall join with the Kings Coroner in inquiring of the death of a man in a Kings House.

Stat.

Stat. 33. *H.* 8. 12. The Coroner of the Kings Houſe ſhall inquire alone without the Coroner of the County, by a Jury of the Yeoman Officers of the Court.

CHAP. 37.

RULE 10. *Stat.* 31. *El.* 3. Upon a Summons in a real Action (fourteen days before the return) a Proclamation of the Summons ſhall be made (upon a Sunday after Divine Service) at the Door of the Pariſh Church where the Land lieth; and ſhall alſo be returned with the names of the Summoners: And till that done, no *Grand Cape* ſhall go out, but an *Alias* and *Pluries*, as the Caſe requireth.

RULE 15. *Stat.* 1. *H.* 55. In every Original VVrit of Actions perſonal, Appeals, and Indictments, in which the *Exigent* ſhall be awarded, to the Names of the Defendants addition ſhall be made of their Eſtate and Degree or Miſtery, and the Towns, Hamlets, Place, and Counties, in which they were or be converſant; otherwiſe all Outlawries thereupon pronounced ſhall be *nul.* And before theſe Outlawries be pronounced, the ſaid VVrits and Indictments ſhall be abated by the exception of omitting the ſaid Addition.

Stat. 6. *H.* 6. 1. All *Exigents* and Outlawries upon indictments in the Kings Bench of Felony and Treaſon, ſhall be void, if before the *Exigent* awarded a *Capias* be not directed to the Sheriff of the County, whereof they be named in the Indictment, having ſix weeks ſpace (or larger, at the diſcretion of the Juſtices) before the Return.

Stat. 8. *H.* 6. 10. In every Indictment, or Appeal of Treaſon, Felony, or Treſpaſs, after the firſt *Capias* returned forthwith (before the *Exigent*) another *Capias* ſhall be awarded to the Sheriff of the County, where

by the Indictment the party is ſuppoſed to abide returnable before the ſame Juſtices, &c. containing the ſpace of three months (where the Counties be holden from moneth to moneth) and of four moneths (where they be holden from ſix weeks to ſix weeks) by which *Capias* the Sheriff ſhall be commanded to take his Body, if he be found in his Baliwick: If he be not found, then to make Proclamation (for his appearance) in two Counties before the return of the Writ. Any *Exigent* or Outlawry otherwiſe pronounced ſhall be holden for none.

Stat. 10. *H.* 6. 6. The like is to be obſerved, when any Indictment or Appeal (taken before Juſtice of Peace, or other having power) ſhall be removed before the King in his Bench, or elſewhere by *Certiorari*, or otherwiſe.

Stat. 6. *H.* 8. 4. Upon every *Exigent* a writ to make three Proclamations (returnable the day of the return of the *Exigent*, and the Proclamations to be made, *viz.* Two in the full County Court, and the Third at the general Seſſions) ſhall go out to the Sheriff of every other County (*viz.* than that, where the Action is brought) where the Defendant is ſaid to be, or lately to have been, if the Kings Writ run there; otherwiſe to the County next adjoyning to that, where he is ſaid to be: Every Outlawry to the contrary ſhall be avoided by plea.

Stat. 37. *E.* 3. 2. A Writ *Identitate nominis*, given to thoſe, whoſe Lands, Goods, or Chattels be ſeiſed by any Officer ſurmiſing them to be outlawed (where they be not) becauſe they bear ſuch Names as they who be outlawed for want of good Declaration of the Sirname.

Stat. 9. *H.* 6. 4. A Writ of *Identitate nominis* ſhall be (in this caſe) maintainable by Executors, as well as by the Teſtator himſelf, if he were living.

RULE 18. *Stat.* 5. *E.* 3. 12. Where the Plaintiff hath recovered

recovered damages, and he againſt whom damages are recovered is outlawed at the Kings Suit, no Charter of pardon ſhall be granted, except the Plaintiff be ſatisfied for his damages. When one is outlawed by proceſs before his appearance, no ſuch Charter ſhall be granted, except he yield himſelf before the Juſtices, from whom the *Exigent* iſſued, who ſhall cauſe the party to be warned to appear before them at a day: whereupon if the Plaintiff appear, they ſhall plead upon the firſt Original, as if no outlawry had been. If the Plaintiff appear not, and the Warning be duely witneſſed, he that is outlawed ſhall be delivered by vertue of his Charter.

Stat. 31. *El.* 3. Upon every *Exigent* in a perſonal Action, a Writ of Proclamation ſhall go out of the ſame Court to the Sheriff of the County, where the Defendant at the time of the *Exigent* ſhall be dwelling, whereupon three Proclamations ſhall be made, *viz.* one in open County Court, another at the Quarter Seſſions, and the third one moneth (at leaſt) before the *Quinto exact* at the Door of the Pariſh Church where the Defendant ſhall be dwelling at the time of the *Exigent*, upon a Sunday, immediately after Divine Service. All Outlawries otherwiſe ſhall be void.

But before reverſing of any ſuch Outlawry in this reſpect, the Defendant ſhall put in Bail, not onely to anſwer the Plaintiff in a new Action, but to ſatisfie the Condemnation, if the Plaintiff begin his Suit within two Terms.

RULE 20. *Stat.* 25. *E.* 3. *Stat.* 5. 14. The ſecond *Capias* in caſe of Felony muſt be returned three weeks after.

RULE 24. *Weſtm.* 2. 39. 13. *E.* 1. The Plaintiff may aver that the Sheriff might have returned greater Iſſues, and thereupon ſhall have a judicial Writ to the Juſtice of Aſſize to inquire of what and how great Iſſue

he might have answered from the day of the purchase of the VVrit to the day of the return, and the Sheriff shall be charged with the Surplussage not returned.

Stat. 1. *E.* 3. *Stat.* 1. 5. The like Averment of too small Issues returned, given against Bayliffs of Franchises, as well as against the Sheriff.

RULE 30. *Westm.* 1. 17. 13, *E.* 1. The Sheriff or Bailiff may take the power of the County or Baliwick, and beat down a Castle or Fortress, where such Beasts are inclosed, if he that took them will not make deliverance.

RULE 33. *Westm.* 2. 11. 13. *E.* 1. Process of Outlawry given in an Action of Accompt.

Stat. 25. *E.* 3. *Stat.* 5. 17. Such process shall be made in a VVrit of Debt and Detinue of Chattels, and taking of Beasts by *Capias* and *Exigent*, as is now used in a writ of Accompt.

Stat. 7. *H.* 5. 1. In writ against Forgers of false Charters and Muniments, like process shall be made by *Capias* & *Exigent*, as in VVrits of Trespass.

Stat. 19. *H.* 7. 9. Like process given in Actions upon the Case sued in the Kings Bench and Common Place, as in Actions of Trespass and Debt.

Stat. 23. *H.* 8. 14. Like process shall be had in every Action, brought upon the Statute of 5. *R.* 2. 7. (concerning forcible entry) as in Trespass, and like process in every VVrit of Annuity and Covenant as in Debt.

CHAP. 38.

RULE *Stat.* 25. *H.* 8. 20. For the Election, Nomination, Presentation, Investing, and Consecrating of Arch-Bishops and Bishops.

RULE 32. *Stat.* 5. *R.* 2. 2. Prohibits going beyond Sea without License, but it is repealed by 4. *Ja.* 1.

RULE

RULE 35. *Stat. Carlile* 15. *E.* 2. The *Dedimus poteſtatem* ſhall be directed to two of the Juſtices, or to one Juſtice and a Knight.

CHAP. 39.

RULE 5. *Gloceſter* 5. 6. *E.* 1. An Action of waſte is maintainable againſt Tenant by the courteſie, in Dower, for life or years; and the party attainted thereof ſhall loſe the thing waſted, and recompence the party grieved thrice ſo much as ſuch waſte ſhall be taxed at.

Weſtm. 2. 14. 13. *E.* 1. The proceſſes in a Writ of Waſte ſhall be Summons, Attachment, and Diſtreſs; and if he come not, then a VVrit unto the Sheriff (taking with him 12 men) to go to the place waſted, and there inquire of the VVaſte, and upon that VVaſte returned Judgement ſhall be made.

Stat. 11. *H.* 6. 5. VVhere the Tenants grant over his eſtate, but notwithſtanding takes the profits, and commits waſte, an Action lies againſt him.

Mag. Cart. 4. 9. *H.* 3. The Guardian may not commit waſte, in pain to loſe the VVardſhip: And (*cap.* 5.) muſt repair and ſuſtain the Houſes of the profit of the Land.

Gloceſter. 5. 6. *E.* 1. If the Guardian commit waſte, and the Wardſhip loſt anſwers not the damages before the Heirs age, he ſhall render damages to the Heir otherwiſe.

Artic. ſuper Cart. 18. 28. *E.* 1. An Eſcheator committing waſte upon VVards Lands, ſhall anſwer damages.

Stat. 36. *E.* 1. *Stat.* 1. 13. The Heir ſhall have an Action of waſte againſt the Eſcheator committing waſte, as well within Age, as when he is at full Age: See alſo 14. *E.* 3. 13.

Weſtm. 2. 22. 13. *E.* 1. A VVrit of waſte is given for one Joyntenant

Joyntenant or Tenant in Common againſt another, wherein the Defendant is to be at his choice, to take his part incertain (and then to have for his part the place waſted) or to agree from thenceforth to take nothing more, than his Companions do.

Gloceſter 13. 6. *E.* 1. Hanging a Plea by Writ, the Tenant may not commit waſte, nor Eſtrepment of the Land in demand, and if he do, the Demandant may have a Writ to cauſe the Land to be kept, that no Waſte nor Eſtrepment be done.

CHAP. 40.

RULE 2. 36. *E.* 3. 15 Declarations ſhall be good enough, if they have matter of Subſtance, though the Terms be not apt.

RULE 10. *Weſtm.* 1. 46. If a Writ of *Novel Diſſeiſin* be purchaſed, and the Diſſeiſor die before the Aſſize be paſſed, the Plaintiff ſhall have a Writ of Entry *ſur diſſeiſin* againſt his Heir; The like ſhall the Heir of the *Diſſeiſin* have, in caſe he die, *&c.* The Nonage of the Heir of the Diſſeiſor or Diſſeiſee ſhall not prejudice in an Aſſize; if the Inqueſts paſs againſt the Heir of the Diſſeiſee, he ſhall have an Attaint *gratis.*

Gloceſter 2. 6. *E.* 1. Where an Infant is held from his Inheritance, whereby he is driven to his Writ, the Inqueſt ſhall paſs, notwithſtanding his Nonage.

Expoſition of the Stat. of Gloceſter 26. *E.* 1. Touching an Inqueſt to be made for an Infant, that Statute ſhall run without limitation of time.

Weſtm. 2. 40. 13. *E.* 1. The Suit of a woman or her heir (in a *Cui in vita*, or a *ſur Cui in vita*) after the death of her Husband, ſhall not be delayed by minority of the Heir, who ought to warrant the Land.

RULE 31. *Weſtm.* 2. 42. Certain Caſes, wherein view ſhall not be granted.

Stat.

Stat. de viſu terræ, & Eſſoyne de ſervitio Domini Regis 12. *E.* View ſhall be granted in a VVrit of VVard, in a VVrit of Cuſtomes and Services, in a VVrit of Advowſon of a Church (where there be more Churches than one in a Town, and all of one Saint) in a VVrit of Dower, and in a *nuper obiit.*

RULE 32. *Weſtm.* 2. 3. The Reverſioner may be received in default of Tenant for life, dower, courteſie, &c. If Judgment be given by reddition, or default, the Reverſioner ſhall have a VVrit of Entry after the death of the Termor; ſo ſhall the Heir alſo, where the Tenant was Tenant in Tail.

Stat. de defenſione Juris 20. *E.* The Reverſioner deſiring to be received before Judgment, ſhall find ſurety (as the Court ſhall allow) to anſwer the value of the Iſſues of the Tenant from the day of the Receit, till Judgement, if it paſs for the Demandant.

Stat. 13. *R.* 2. 17. The like Receit ſhall be for the Reverſioner upon the faint pleading of ſuch a Tenant, and he ſhall plead in chief without delay: And the Judges (by diſcretion) ſhall give days of grace between the Demandant and him, that is received, without giving the Common day in Plea of Land, unleſs it be by the Demandants aſſent. Surety for the value ſhall be found (as before in 20 *El.*) as well where the receit is counter-pleaded, as where it is granted.

Gloceſter 11. Tenant for years ſhall be received before Judgment rendred, to ſay that the Action was by Covin.

Weſtm. 2. 3. Receipt is given to the VVife in her Husbands life time, if he loſe her Land by default, and the Tenant, that recovered againſt the Husband, muſt maintain his own right.

RULE 33. *Weſtm.* 1. 39. VVhat Counter-pleaders are good in Mortdanceſtor, *Nuper obiit*, Intruſion, and ſuch like

like actions, and also in writs of Entry in the Degrees, &c. See also *Stat. de vocat ad warrant.* 20. *E.* 1. 1. 4. *E.* 1. 18. & *Westm.* 2. 6.

RULE 48. After Sanctuaries were taken away for sundry offences by divers Statutes, at last by the Statute of 21 *Jac.* 28. they were totally annulled.

RULE 53. *Glocester* 3. The Heir shall not be barred of his Mothers Inheritance by the Warranty of the Father, being Tenant by courtesie, or alienation without Fine in the Mothers life time, except he leave *Assets.*

RULE 68. *Westm.* 1. 12. Notorious Felons, which will not put themselves upon an Inquest at the Kings Suit against them, shall be put to a pain *fort & dure*, as those that refuse to be tried by the Law of the Land.

RULE 70. The Statutes that concern Abjuration are *Stat. de Artic. Cler.* 10. and 15. 21. *H.* 8. 2. & 21. 2. 8. 12. & 24. But Sanctuaries being taken away, that is now also out of use.

CHAP. 41.

RULE 18. *Westm.* 2. 38. In an Assize there shall be but 14 summoned. And men of the age of 70 years continually languishing, or sick at the time of the Summons shall not be put upon Juries.

Artic. super Cart. 9. & 34. *E.* 34. Juries shall be made of the next people of the County.

Stat. 11. *H.* 6. 1. None dwelling in Stews shall be of a Jury.

Stat. 9. *E.* 3. 5. A Deed pleaded in a Franchise shall be tryed in the County, where the Action is brought.

Stat. 2. 3. *E.* 6. 24. Upon a stroke or poyson in one County, the party dying in another, an Indictment and Trial may be in the County where he dieth, and also an Appeal sued there, and tried by 12 men of the same County

County: Likewiſe the Acceſſories in one County to a Murder or Felony in another County, ſhall be indicted, arraigned, &c. In the County, where the offence of Acceſſory is committed.

Stat. 33. *H.* 8. 20. The Indictment and Trial of Lunaticks, confeſſing Treaſon, *&c.*

Stat. 33. *H.* 8. 23. The Trial of Treaſon, *&c.* confeſſed before the Lords of the Counſel, ſhall be by Commiſſion out of the Chancery.

Stat. 27. *H.* 8. 4. and 28. *H.* 8. 13. Treaſon, Felony, *&c.* committed within the Admirals Juriſdiction, ſhall be heard and determined by commiſſion directed to the Admiral, and three or four others, *&c.*

Stat. 32. *H.* 8. 4. Treaſons and Miſpriſions of Treaſon in *Wales*, ſhall be tryed there by ſuch Commiſſioners as the King ſhall appoint.

Stat 35. *H.* 8. 2. Treaſon, *&c.* committed out of *England*, ſhall be tried in the Kings Bench, or by Commiſſioners, &c.

Stat. 1, *&* 2. *P*, *&* *M.* 10. Trials for Treaſon ſhall be according to the courſe of the Common Law.

Stat. 23. *E.* 33. No Indictors ſhall be put on Inqueſts upon the deliverance of Indictees of Felonies or Treſpaſs.

Weſtm. 2. 38. None ſhall be put in Aſſize or Juries triable in their own County, but ſuch as have 20 *s. per annum* free-hold, nor in Aſſize, *&c.* triable out of their County, unleſs they have 40 *s. per annum*, &c.

Stat. de ponend. in Aſſiſ. 21. *E.* 1. None ſhall be put in Aſſize out of their County, unleſs they have 5 *l. per annum*, now within their County, unleſs they have 40 *s. per annum.*

Stat. 2. *H.* 5. 3. Upon Trial for the death of a Man, and betwixt party and party (when the debt or damages amount to 40 Marks) he ſhall have 40 *s. per annum.*

Stat.

Stat. 33. *H.* 8. 13. In Corporations 40 *l.* in goods sufficeth.

Stat. 2. *E.* 6. 32. The 40 *s.* yearly value must be inserted in the *Venire facias.*

Stat. 27. *El.* 6. Such a Juror shall have 3 *l.* yearly value: Howbeit, these two last Statutes extend not to Corporations.

Stat. 27. *El.* 7. The Juror shall be returned by some addition, whereby he may be known.

Stat. 8. *H.* 4. 3. Every Juror returned within the County of *Middlesex*, shall be called the fourth day of the Return.

Stat. 5. *E.* 3. 10. An *Ambidexter* shall never be of a Jury more.

Stat. 34. *E.* 3. 8. The party or any Stranger may sue him for it.

Stat. 3. 8. *E.* 3. 12. And both the Jurors and the Embracers, being thereof attaint, shall pay ten times so much as they have taken.

Westm. 2. 30. When, and how Assizes, *&c.* shall be taken in the Country: See also *Statutum de finibus levatis* 4. 21. *E.* 1. That Enquests thereof being taken shall be returned into the Bench, and there Judgment shall be given thereupon, *&c.*

Stat. Eborac. 3. 12. *E.* 2. Inquests in Pleas of Land, that require too great Examination, shall be taken in Country before a Justice of the Place, where the Plea depends, and a Knight there, or other, *&c.*

Stat. 42. *E.* 3. 11. *Nisi prius* shall not be granted before the name of the Jurors be returned.

Stat. 14. *E.* 3. 16. The directing of *nisi prius* to be tried in the Country.

Stat. 18. *El.* 12. Trial of *Nisi prius* for *Middlesex*, in the Term time, or four days after.

RULE 19. *Stat.* 15. *H.* 8. 6. Made perpetual. 2 *E.* 6. 32. Six sufficient Hundreders shall be returned upon every Jury.

Stat.

Stat. 27. *El.* 6. If two ſufficient Hundreders appear in any perſonal Action, it ſufficeth.

RULE 20. *Stat.* 7. *R.* 2. 10. An Aſſize of *Novel diſſeiſin*, of Rent iſſuing of Tenements in divers Counties, ſhall be in the Confines of the ſaid Counties.

RULE 22. *Stat.* 28. *E.* 3. 3. Confirmed by 8 *H.* 6. 28. In every Suit between an Alien and a Denizen (though the King be a party) the one half of a Jury ſhall be Aliens, if there be ſo many in that *Viſne*; and if there be not ſo many, then ſo many as be there, not parties.

RULE 23. *Mag. Chart.* 29. A Peer of the Realm upon an Indictment of Felony or Treaſon, ſhall be tried by his Peers.

Stat. 20. *H.* 6. 9. Dutcheſſes, Baroneſſes, Counteſſes, *&c.* ſole or married, ſhall be tried (in ſuch caſes) as Peers of the Realm.

RULE 37. *Stat.* 22. *H.* 8. 14. No perſon arraigned for petty Treaſon, Murder, or Felony, ſhall be admitted to any peremptory Challenge above the number of twenty.

RULE 28. *Stat.* 35. *H.* 8. 6. Made perpetual. 2. *E.* 6. 32. A *Tales* may be made up before the Juſtices of Aſſize, or *Niſi prius*, of able perſons of the ſame County then preſent, at the prayer of the Plaintiff or Demandant.

Stat. 4. *&.* *P. M.* 7. So likewiſe for the King upon requeſt by any authorized thereunto, or aſſigned by the Court, or by the Informer, that follows as well for the King as for himſelf.

Stat. 14. *El.* 9. Such a *Tales de circumſtantibus* ſhall be alſo granted at the prayer of the Defendant or Advowant.

RULE 53. *Stat.* 21. *H.* 8. 3. The demand of a thing intire may be abridged before Verdict, though thereby the Writ become falſe.

RULE

RULE 60. *Magn. Cart.* 28. VVager of Law ſhall not be admitted without credible witneſſes.

Stat. 5 *H.* 4. 8. In Actions of Debt upon arrerages of accompt faining (to the Intent to put the Defendants from their Law) that the ſame was found before their Apprentices or Servants, Auditors aſſigned therein; it ſhall be in the Judges diſcretion upon examination of the Attorneis (or whom elſe they pleaſe) to receive the Defendants to their Law, or elſe to try the ſame by Inqueſt.

CHAP. 42.

RULE 10, &c. VV *Eſtm.* 2. 12. In an Appeal of the death of a man, no Eſſoin ſhall lie for the Appeallor.

Weſtm. 1. 41. In an Aſſize and *Juris utrum*, after the Tenant hath appeared, he ſhall be no more eſſoyned, ſo it is alſo for Demandants in Aſſize, by *Weſtm.* 2. 28.

Weſtm. 1. 42. Perceners or Joyntenants in a *Præcipe* againſt them, ſhall have but one Eſſoin: So likewiſe for a Man and his VVife by the *Stat.* of *Gloceſter*, 10.

Stat. 9. *E.* 3. *Stat.* 1. 3. In a VVrit of debt againſt Executors, they ſhall have but one Eſſoin before, and another after appearance.

Weſtm. 2. 27. No Eſſoin is allowed after day given by *prece partium.*

Marlbr. 14. After a Man hath put himſelf upon an Inqueſt, he ſhall have but one Eſſoin.

Weſtm. 2. 17. After one hath put himſelf upon an Inqueſt, an Eſſoin ſhall be allowed him at the next day, but never after.

Marlbr. 19. None ſhall need to ſwear to warrant his Eſſoin.

Weſtm.

Weſtm. 1. 43. The Demandant may aver againſt an Eſſoin of being beyond Sea.

Weſtm. 1. 17. He may aver that the Tenant is not ſick, nor in ſuch plight, but that he come before the Juſtices, *&c.*

Stat. 5. E. 3. 7. Eſſoin of the Kings Service or protection ſhall not be allowed in Writs of Attaint.

Stat. of Eſſoins, 12. E. 3. 2. See many particular Caſes where Eſſoins lie not.

RULE 16. *Stat. de anno Biſſextili*, 21. *H.* 3. The day increaſing in the Leap-year, and that going before, ſhall be accounted for one day.

Dies communes in Banco, 51. *H.* 3. Days given in writs ſhall have 9 returns.

Dies communes in Banco, and 32. *H.* 8. ar. Common days ſhall be given, in real actions 9 returns; In Writs of Dower 5 returns.

Marlbr. 21. In Dower, *unde nihil habet*, 4 or 6 days ſhall be given in the year: In Aſſizes of *Darrein preſentment* or *Quare impedit*, from 15 days to 15 days, or from 3 weeks to 3 weeks, as the place ſhall be near or far.

Stat. 5. *E.* 3. 6, & 7. In an Attaint 5 days at leaſt.

RULE 17. 1 *E.* 6, 7. By death of the King, no Action, Suit, Bill, or Plaint, ſhall be diſcontinued, or put without day, but ſhall proceed as if the King had lived.

RULE 39. *Stat.* 14. *E.* 3. 14. The manner of ſearch in ſuit by petition.

RULE 43. 27 *El.* 7. A Juror ſhall not be returned without a true addition of the place where he dwels, and ſome other addition, whereby he may be known.

Stat. 35. *H.* 8. 6. What Iſſues ſhall be returned upon Jurors.

Stat. 2. 3 *E.* 6. 32. If the principal Jury appear not

fully at the *nisi prius*, those that make default, shall forfeit their Issue, though the Jury be made up *de Circumstantibus*.

CHAP. 43.

RULE 20. *Stat. de consultatione*, 24. *E.* 1. A Consultation shall be awarded by the Chancellor or Chief Justice, upon sight of the Libel, at the Instance of the Plaintiff.

Stat. 50. *E.* 3. 4. Upon a Consultation the Ecclesiastical Judge may proceed, notwithstanding any other prohibition, so the matter of the Libel be not enlarged or changed.

RULE 23. *Westm.* 1. 15. Persons outlawed, and such as have abjured the Realm, Provers, and such as be taken with the manner, prison-breakers, Thieves, openly defamed and known, Appellees by provers (during the life of such provers) house-Burners, Counterfeiters of the Kings Seal and Coin, Excommunicate persons, manifest Offenders and Traitors are not bailable, *&c.* Other Statutes that concern Bail, are, 3. *H.* 7. 3. 1, 2. *P. M.* 13. and 3. *P. M.* 10.

CHAP. 44.

RULE 3. *Westm.* 2. 5. When the Parson of any Church is disturbed to demand his Tithes in the next Parish by an *Indicavit*, the Patron shall have a Writ to demand the Advowson. See *Stat. pro Clero*, 18. *E.* 3. 7, & 47.

RULE 6. *Stat.* 25. *E.* 3. 18. The Lord may seise the Body of a Villain, notwithstanding that a Writ *de libertate probanda* be hanging.

RULE 10. *Stat.* 5. *E.* 3. 7. No protection shall be allowed in Writ of Attaint.

RULE

RULE 12. See *Stat.* 13. *R.* 26. The Statute of Protection, & 1. *R.* 2. 8.

RULE 14. A Creditor ſhall have an Action and Judgment againſt the Kings *Debtor*, notwithſtanding ſuch a Protection, but not Execution, unleſs he take upon him to pay the King, and then he ſhall have Judgment and Execution of both debts, as well of that due to the King, as to himſelf.

RULE 16. *Weſt.* 2. 17. He may aver that he is not ſick, &c. *vide ſupra, Cap.* 42. *Ru.* 10.

CHAP. 45.

RULE 7. *Stat.* 14. *El.* 8. Every fraudulent recovery againſt Tenant for life, whereupon the Tenant for life is vouched, ſhall be void againſt the Reverſioner, or him in Remainder, unleſs it be by his own conſent appearing of Record.

Stat. 21. *H.* 8. 15. Termers for years, or ſuch as are in by Execution of Statute Staple, Statute Merchant, or *Elegit*, may falſifie Recoveries for their own Term only as Tenants of the Free-hold might have done at the Common Law.

RULE 13. 25. *H.* 8. 3. Revived by 5, 6 E. 16. 10. One arraigned upon an Indictment of petty Treaſon, wilfull burning of houſes, murther, robbery, or other felony according to the meaning of the ſame Statute, if he ſtand mute of malice or froward mind, or challenge peremptorily above 20. or will not directly anſwer, ſhall loſe his Clergy, in ſuch manner as he ſhould, if upon the Arraignment he had been found guilty.

Stat. pro Clero, 25. E. 3. 4. None convict of petty Treaſon ſhall have it.

Stat. 8. El. 6. Not in Rape, Raviſhment, or Burglary, nor in the carnal abuſing of a woman within ten years of age.

Stat. 25. *H.* 8. 6, & 5. *El.* 17. Nor in Buggery.

Stat. 5. *E.* 6. 9. Not for robbing a dwelling Houſe, Booth, or Tent, *&c.*

Stat. 4, 5 *P. M.* 4. Nor for Acceſſories before the Fact in petty Treaſon, murder or robbery in an houſe, or in or near the High way; or for the wilfull burning of a dwelling houſe, or a Barn with grain.

Stat. 25 *H.* 8. 3. & 5 *E.* 6. 10. He that doth a Robbery or Burglary in one County, and is taken with the goods ſo robbed or ſtoln in another County, ſhall loſe his Clergy there, as he ſhould do where the Robbery or Burglary was committed.

Stat. 4 *H.* 6. 13. & 1 *E.* 6. 11. It is grantable but once to one perſon, unleſs he be within orders.

Stat. 4 *H.* 7. 13. He that asketh his Clergy the ſecond time, ſhall at a certain day bring his Letters of Order or a certificate.

Stat. 4 *H.* 7. 18. He that hath his Clergy ſhall be marked in the hand, *viz.* with an *M* if he were convict of Murder, with a *T*. if he were convict of other Felony.

Stat. 1 *E.* 6. 12. A Lord of the Parliament in all caſes, where Clergy lyeth at the Common-Law, or is reſtrained by Statute, ſhall upon his Prayer be adjudged as a Clerk convict, though he cannot read.

Stat. 1 *El.* 4. & 18 *El.* 7. After purgation he ſhall be put to anſwer to any offence (committed before his admiſſion to the Clergy) whereupon Clergy is not allowable, and whereof before he was not indicted and acquitted, convicted, or attainted, and pardoned, and ſhall be demeaned in all things, as if he had never been admitted to his Clergy.

Stat. 18 *E.* 7. He that is allowed Clergy, ſhall not be delivered to the Ordinary, but after burning in the hand, ſhall be forthwith delivered by the Juſtice out of Priſon; yet for further correction they may detain him

him in priſon, ſo as it be not above a year.

RULE 24. *Weſtm.* 2. 12. One being acquitted upon an Appeal or Indictment of Felony, may have the abettors inquired, and have a judicial writ for damages againſt them, if the appellant be not ſufficient.

Stat. 8. *H.* 6. 10. An Action upon the Caſe given for him that is duely acquit by Verdict againſt every procurer of any Judgment, or appeal of Treaſon, Felony, or Treſpaſs: and like Proceſs ſhall be therein, as in a Writ of Treſpaſs, *vi & armis.*

RULE 37. *Weſtm.* 2. 18. 13 E. 1. Where debt is recovered or acknowledged in the Kings Court, or damages awarded, it ſhall be from henceforth in the election of the Plaintiff to have a Writ of *Fieri facias* unto the Sheriff, to levy the Debt upon the Lands and Chattels of the Debtor, or that the Sheriff ſhall deliver to him all the Chattels of the Debtor, (except Oxen and Beaſts of his Plough) and the one half of his Land until the debt be levied upon a reaſonable prize or extent. And if he be put out of the Land, he ſhall recover it again by a writ of *Novel diſſeiſin*, and after that by a Writ of *Reddiſſeiſin*, if need be.

Action Burnel. 11 E. 1. A Debt acknowledged to a Merchant before the Mayor of *London*, *York*, or *Briſtol*, or before a Mayor or Clerk, (appointed thereunto by the King,) ſhall be enrolled: And if it be not paid at the day, the Debtors moveables ſhall be prized and ſold in ſatisfaction by the Mayor if he have any within his Juriſdiction, elſe by writ out of the Chancery upon a Certificate of the Recognizance thither. The Appriſors are to take them at the prize, if they apprize them too high; if the debtor have not moveables ſufficient, he ſhall be impriſoned, until, *&c.* the like Proceſſes againſt pledges in default of ſufficient moveables of the Principal.

Stat. de Mercatoribus, 13. E. 1. A Debt acknowledged to a Merchant before the Mayor of *London*, or chief VVarden of the Town, which the King ſhall appoint, or other ſufficient men (when they cannot attend) and before a Clerk, which the King ſhall aſſign, ſhall be inrolled; and if it be not paid at the day, the Debtor if he be a Layman, ſhall be impriſoned by the Mayor, until, *&c.* if he be within their power, elſe by writ out of the Chancery, upon Certificate of the Recognizance thither. And if he agree not with the Creditor within a quarter of a year after, then all the Lands that were the Debtors (the day of the Recognizance made) and alſo his goods ſhall be delivered to the Creditor upon a reaſonable extent. And of theſe Lands ſo delivered, the Coniſee being ouſted, ſhall have an Aſſize or *redisſeiſin*.

The VVrit out of Chancery ſhall be returnable before the Juſtices of either Bench, and upon a *non eſt inventus* returned, or that he is a Clerk, VVrits to all the Sheriffs, where he hath Lands or Goods, ſhall go forth to deliver the ſame upon reaſonable extent, and to what Sheriff he will to take his Body. The like proceſs ſhall be againſt the pledges, if the Money be not paid at the day: If the debtor or pledges die, the Creditor ſhall have Execution upon the Lands of the Heir as at his full age. *The Stat. of the Staple*, 27. E. 3. *Stat.* 28. The Mayor of the *Staple* ſhall take recognizance of debt before himſelf, and the Conſtable of the Staple, whereupon (default of payment being made) the debtors Body ſhall be impriſoned, and his goods ſold in ſatisfaction of the debt (if they be within the Staple) otherwiſe upon a Certificate in the Chancery, a writ ſhall go out from thence to impriſon his Body, and ſeize upon his Lands and Goods, which ſhall be returned into the Chancery, and execution thereupon in all reſpects as in the Statute Merchant, ſave that the Debtor ſhall have no advantage of the quarter of a year.

Stat.

Stat. 5. *H.* 4. 12. A Statute being once shewed in the Common-place, and the process afterwards discontinued, yet execution may afterwards be awarded without shewing it again.

Stat. 11. *H.* 6. 10. He that is in prison upon a Recognizance, shall not be delivered out of prison upon a *scire facias* against the party, and surety found to the King alone, but shall find sureties severally, as well to the King, as to the other party.

Stat. 23. *H.* 8. 6. Either of the chief Justices, (or in their absence out of the Term) the Mayor of the Staple of *Westminster* with the Recorder of *London* may take Recognizances, and they shall be executed in all respects as a Statute Staple.

Stat. 27. *El.* 4. Every Statute Staple or Merchant, not brought to the Clerk of Recognizances within 4 months next after the acknowledgment thereof, shall be void against all persons, their heirs, successours, executors, administrators, and assigns only, which for good consideration, shall after the acknowledging thereof, purchase the Land, or any part thereof liable thereunto, or any rent, lease, or profit out of the same.

Stat. 32. *H.* 8. 5. Lands lawfully delivered in execution upon a Judgment, Statute Merchant, Staple, or Recognizance, being evicted without any fraud or default in the Tenant before he have levied the whole debt and damages, and Recoverer and Recognisee shall have a *scire facias* out of the same Court, where execution was awarded, returnable there full forty days after the date: And thereupon a new Writ of execution (of the nature of the former) shall issue forth to levy the rest of the debt and damages, if the Defendant make default; or shew no good matter in Bar.

Mag. Chart. 8. 9. *H.* 3. The King shall not take the

Lands or Rents of the Debtor, if he have sufficient Chattels.

Mag. Chart. 18. The goods of the debtor may be attached after his death by the view of lawful men, that nothing be medled with till the Kings debt be paid.

Stat. 33 *H.* 8. 39. All obligations to the King shall be of the force of a Statute staple.

RULE 48. *Westm.* 2. 45. 13 E. 1. For all things recorded before the Kings Justices; or contained in Fines (as contracts, covenants, obligations, services or customs, acknowledged, or any other things enrolled) a Writ of execution shall be within the year: But after the year a *Scire facias*: The like also of a *Mesne*, who by Judgment or recognizance is bound to acquit.

CHAP. 47.

RULE 9. *Stat.* 9. *R.* 2, 3. If Tenant for life, or in tail after possibility of issue extinct be impleaded, and judgment pass against him, the reversioner or remainder man at the time of the judgment, shall have writ of Error upon an error in the record of the same judgment, as well in the life of such a Tenant, as after his death: And if at the time of reversing the Judgment, the Tenant for life, &c. be alive, he shall be restored, &c. his possession with the mean profits, and the reversioner, &c. to the arrerages of the rent, if any be due: But if the Tenant for life, &c. be dead at the time of reversing the judgment, then the reversioner, &c. shall be restored to the possession with the issues after the death of the Tenant for life, &c. and also to the arrerages due in his life. *See the Marq. of Winch. Case*, Co. 3. 4.

Stat. 31 E. 3. 12. Error in the exchequer shall be reversed before the Chancellor and Treasurer, taking to them such Justices, and other sage persons as they shall think

think fit, and afterwards the Roll shall be sent back into the Exchequer to make execution.

Stat. 31 *El.* 2. If either the Lord Chancellor or Lord Treasurer, or both the Chief Justices come at the day of adjournment, in the Writ of Error in the Exchequer, it shall be no discontinuance.

Stat. 32 *H.* 8. 30. *Made perpetual*, 2 *E.* 6. 32. After a verdict tried by 12 men or more in any Suit in a Court of Record, no Judgment shall be stayed or reversed for any mispleading, lack of colour, insufficient pleading, miscontinuance, discontinuance, misconveying of Process, misjoyning of issue, lack of Warrant of Attorney for the party against whom the Issue is tried, or any other default or negligence of the parties, their Councellors, or Attorneis.

Stat. 18. *El.* 4. 14. After a Verdict of 12 men or more in any Suit in Court of Record, Judgment shall not be stayed or reversed for default of form, or lack of form, false Latine, variance for the Register, *&c.* in any writ, original or judicial: Declaration, Bill, or Plaint, or for want of any writ original or judicial or by reason of any imperfect or insufficient return, or for want of any warrant of Attorney, or by reason of any manner of default in process, upon, or after *Aid*, *Prayer*, or *Voucher*.

Stat. 27 *El.* 5. After Demurrer joyned or entred in any suit in Court of Record, the Judges shall proceed and give Judgement according to right, and the matter in law appearing to them, without regarding any imperfection, defect, or want of form in any Writ, Return, Plaint, Declaration, or other pleading whatsoever, except those only which the party specially and particularly shall set down and express together with his Demurrer: And no Judgment to be given shall be reversed by writ of error, or by any such imperfection, defect, or want of form, as aforesaid, except as is before excepted.

The

The two last Statutes extend not to Suits of Felony or Murder, nor to the Indictment or preferment of them; or of treason, nor to the Process of any of them, nor to any Suit upon any popular or penal Statute.

RULE 16. *Stat.* 27. *E.* 8. An Error in the Kings Bench in an Action of Debt, Detinue, Covenant, Account, Action upon the Case, *Ejectione firmæ*, or Trespass first commenced there (where the King is no party) may at the parties choice be reversed in the Exchequer Chamber before the Justices of the Common Place, and such Barons of the Exchequer as are of the *Coife*, or six of them at the least, other than for Error concerning the Jurisdiction of the Kings Bench, or want of form in a writ, return, plaint, bill, declaration, pleading, process, verdict, or proceeding whatsoever. And upon the Judgment affirmed or reversed, the Record shall be sent back into the Kings Bench, to proceed and award Execution thereupon, the party grieved with such reversal or affirmation, may have a writ of error in the Parliament in such sort as is now used upon erroneous Judgments in the Kings Bench.

Stat. 31. *El.* 1. Any three of the Justices and Barons (if the full number come not) may receive writs of Error, award process, prefix days for the continuance of Writs of Error, &c.

RULE 12. *West.* 1. 37. 3 *E.* 1. An Attaint is given in pleas of Land or of Free-hold, and of things that touch Free-hold.

Stat. 1 *E.* 3. *Stat.* 1. 6. It is given in Writs of Trespass, as well upon the principal, as upon the damages.

Stat. 5. *E.* 3. 6. 7. In Attaints no Essoin or Protection shall be allowed: and a *nisi prius* is given in such Writs, as well as in others.

Stat. 28. *E.* 3. 8. An Attaint is given in Trespass as well upon a Bill, as upon a Writ: without having regard to the quantity of the damages.

Stat.

Stat. 34. E. 3. 7. An Attaint is granted in all pleas, as well real as perſonal.

Stat. 9. *K.* 2. 3. It is given to the Reverſioner during the life of his Tenant for life upon a Recovery againſt him, with reſtitution to the Tenant that left his poſſeſſion, together with the mean profits, and of the arrerages to the Reverſioner: but if the Tenant that ſo loſt die dead, or were of covin with the Recoveree; reſtitution ſhall be made to the Reverſioner of the poſſeſſion it ſelf with the mean profits arrerages, after ſuch death or recovery by covin; ſaving to the Tenant his Action by *ſcire facias* if he will traverſe the Covin.

Stat. de Attinctis. 13. E. 2. If the petty Jury appear not at the firſt diſtreſs againſt them, or a *nihil* be returned, the Grand Jury ſhall be taken by their default.

Stat. 23. *H.* 8. 3. *Made perpetual by* 13 El. 25. In any Suit before Juſtices of Record (not concerning life) an Attaint is given againſt the Petty Jury, and every of them, and the party himſelf; the Proceſs againſt the Petty Jury and Grand Jury, ſhall be ſummons and reſummons, and diſtreſs infinite.

Open proclamation ſhall be made in the Court where the Diſtreſs is awarded, more than 15 days before the Return of the Diſtreſs; and the Grand Jury ſhall be taken in default of the Defendant, or petty Jurors, or any of them.

If any of the petty Jury appear, then the Plaintiff ſhall aſſign the falſe Oath of the firſt Verdict untruly given, whereunto the petty Jury ſhall have no anſwer if they be the ſame perſons, and the writ, proceſs, return, and aſſignment be good and lawful, (except the plaintiff in the ſame Attaint hath before been non-ſuit or diſcontinued his Suit, or hath had a former Judgment therein) but only that they made a true oath, which Iſſue ſhall be tried by 24 of the Grand Jury; and the party

ſhall

ſhall plead that they gave a good Verdict, or any other matter which ſhall be a ſufficient bar of the attaint: Notwithſtanding which plea, the grand Jury ſhall without delay enquire of the truth of the Verdict: ſuch a day ſhall be given in a Proceſs, as in a writ of Dower, and no Eſſoin or Protection allowable.

By the death of the party, or one of the Petty Jury the attaint ſhall not abate, nor be deferred againſt the reſt, as long as two of the petty Jury ſhall live.

Every attaint ſhall be in the Kings Bench or Common place, and the *Niſi prius* granted upon the diſtreſs by the diſcretion of the Juſtices. Every of the petty Jury may appear and anſwer by Attorney. The *Non-ſuit* or releaſe of one, when there be diverſe Plaintiffs or Defendants in an Attaint ſhall not prejudice.

Every one of the grand Jury muſt have 20 Marks apiece of Land of freehold out of ancient *demeſne*, but if the value of the thing in ſuit be under the value of 40 *l.* then 5 Marks a year, or 100 Marks worth of goods ſufficeth: For default of ſuch ſufficient Jurors within the ſame County, a *Tales* ſhall be awarded unto the next.

Stat. 11 E. 6. 4. The Plaintiff ſhall recover Coſts and Damages againſt the Juror or Defendant, that pleads a feigned plea in delay.

FINIS.

A

SUMMARY

OF THE

COMMON-LAW

OF

ENGLAND.

As it ſtood in Force, before it was altered by Statute or Acts of *PARLIAMENT.*

Extracted (for the moſt part) out of the *French* and *Engliſh* Copies of Sir *HENRY FINCH*, Kt. his Learned Treatiſe of the *LAW*.

And digeſted into certain Tablets for the Help and Delight of ſuch Students as affect METHOD.

By *E. W.*

Methodus Memoriæ Dux & Fulcrum.

LONDON,

Printed *Anno Salutis*, 1678.

AN ADVERTISEMENT TO THE READER.

THE *Science of the* Common-Law *of* England, *hath not only been in former times, but even at this day, is accounted ſo Abſtruſe and Intricate, that it hath always ſeemed an impoſſibility to reduce it to Method: Howbeit, our Learned Author in his Treatiſe of the Law, hath not only cloathed it with a* Logical *method, but with ſuch an* exact *one, as may be paralell'd with (if not extolled above) that of* Wollebius *for Theology,* Ramus *for Geometry,* Keckerman, Alſtedius, *and other modern Writers, for Logick, Ethicks, Phyſicks, Politicks, Mathematicks,* &c. *So as the Student having treaſured up in his Memory the Common places of Law held forth in theſe* Tablets, *together with their Coherence and Dependance one upon another, may be thereby furniſhed in all the general and neceſſary Titles of Law,*

whereunto he may aptly refer any Case he meets with, especially having also beforehand, by perusing the Treatise at large, acquainted himself with the Definitions, Distributions, Affections, Rules, and Examples, respectively belonging to each several Title, whereby he may more perfectly understand the nature of them. Besides, if the Text be not read with these Tablets, *he will meet with divers things in them which are now abrogated by Statute, and so not Law at this day, as* Sanctuaries, *which are now annulled by* 21 Jac. 28. *divers Offences (before)* Petty Treason, *now by Statute made* High Treason, *and the like. All which is left to his Industry and Discretion: The Scope and Design of this* Summary *being only to shew him the Harmonical Frame of the Original Common-Law before it was altered by Statute, Acts of Parliament, and other Constitutions of State, according to the Caution before in the Title Page premised.*

TABLE I.

Of the Common-Law of *England* observe

1. The Circumstances, *viz.*

The place where it is used, *viz.* throughout the Realm of *England*, divided into Counties, Hundreds, and Towns, within which there are divers Usages differing from the Common-Law, called Customs.

The persons who are to use it, and they are to be considered

As one entire Body: The King. His Subjects: Barons. Commons.

As particular persons: Natural Persons, as every man.

Bodies Politick: At the Com. Law: The King alone, and by himself considered.

The Rector of a Church, or Parson.

Grown of latter time: Temporal, as Major and Communalty, *&c.*

Spiritual: Regular, as Abbot and Convent, *&c.*

Secular, as Bishop and Chapter, *&c.*

2. The parts, See *Tab.* 2.

3. The Common Affection, *viz.* Action, *Tab.* 24.

TABLE 1.

The parts of the Common Law are two,

The one concerns Possessions, whereof consider

The General Affections

1. To Possessions this is general, that they may pass by { Grant, Exchange, Prescription.

2. Sundry men possessing the same thing by purchase, are { Joynt Tenants, who possess by the same Title. / Tenants in common, who possess by several Titles.

3. A Possession is either { Restrictive, upon { Limitation, which ceaseth upon doing or not doing of something. / Condition, which is only defeasable upon the doing or not doing of something. } / Absolute, which is neither upon Limitation or Condition.

4. *Tab.* 3.

The Species, or several kinds, *Tab.* 4.

The other, the Punishment of Offences, *Tab.* 12.

4. Poſſeſſions are either in
- Poſſeſſion, *viz.* ſuch as one doth enjoy.
- Action, touching which conſider
  1. How it ariſeth, and that is in reſpect of,
     - Right, when wrong was done before.
     - Title, when no wrong was done.
  2. The Rules which concern it.
     1. A thing in Action cannot be granted, but to him in poſſeſſion, and that by
        - Releaſe, which is the paſſing of the Grantors Intereſt.
        - Confirmation, which is the ratifying of the Grantees poſſeſſion.
     2. The Grant of a thing in Action, and of ſuch things in poſſeſſion, as cannot paſs by livery of the Hand, muſt be by Deed, *viz.*
        - Deed Poll, which is the only Deed of the Grantor.
        - Indenture, which is the mutual Deed of both, and makes an Eſtopel to both parties.

The ſeveral kinds of Poſſeſſions, and ſo a Poſſeſſion is

- An Hereditament, whereof conſider,
  - The ſeveral Eſtates, *viz.*
    - Inheritance, *Tab.* 5.
    - The ſeveral Kinds, *Tab.* 6.
  - Particular, *viz.*
    - Certain, which is alſo called a Term, whereof conſider,
      - The ſeveral Kinds,
        - For life
          - In Deed, after actual Seiſin.
          - In Law before Entry.
        - For years.
      - The Dependants
        - Remainder, which is the reſidue of an Eſtate at the ſame time appointed over.
        - Reverſion, which is the reſidue of an Eſtate not at the ſame time appointed over.
    - Uncertain,
      - At ſufferance, when after full occupation he continueth poſſeſſion without Authority.
      - At will,
        - According to the Cuſtom, as a Copyholder.
        - At pleaſure, as a bare Tenant at will.
      - These paſs with Attornment.
- Chattel, *Tab.* 11.
  - For his own life.
  - For anothers life, & theſe are
    - Free-hold.
    - These paſs by Surrender.

TABLE 5.

Inheritance, whereof consider
- The estate called Fee-simple, which is
  - Conditional, when an Hereditament is limited to the Heirs of the Body: Hither Frank-Marriage may be referred.
  - Absolute, which is a Fee-simple to one and his Heirs whatsoever.
- The Incidents,
  - Dower whereby a woman hath the Thirds in severalty.
  - Tenancy by the Courtesie of *England*.
- The divers manners of possessing it, *viz.* In
  - Deed.
  - Law.

TABLE 6.

The several kinds of an Hereditament, and so it is
- Common, as
  - A Tenement which is a Possession holden, & it is
    - Land, which is a Tenement in manual occupation, and here prescription hath no place.
    - An Advowson, which is the Interest of presenting to a Church.
  - A bare Hereditament, *Tab.* 7.
- Prerogative, *Tab.* 10.

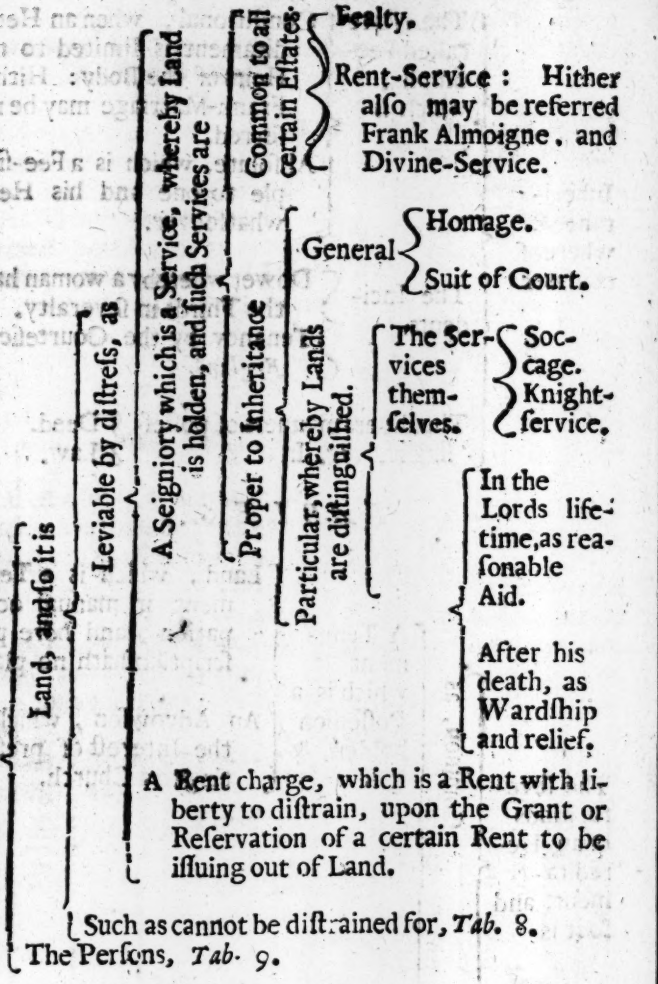

A bare Hereditament, which concerns
Land, and so it is
Leviable by distress, as
A Seigniory which is a Service, whereby Land is holden, and such Services are
Common to all certain Estates
Fealty.
Rent-Service: Hither also may be referred Frank Almoigne, and Divine-Service.
Proper to Inheritance
General
Homage.
Suit of Court.
Particular, whereby Lands are distinguished.
The Services themselves.
Soccage.
Knight-service.
In the Lords life-time, as reasonable Aid.
After his death, as Wardship and relief.
A Rent charge, which is a Rent with liberty to distrain, upon the Grant or Reservation of a certain Rent to be issuing out of Land.
Such as cannot be distrained for, Tab. 8.
The Persons, Tab. 9.

TABLE 8.

A bare Hereditament concerning Land, for which no distress can be taken, is

- Rent-seck, which is a Rent without liberty to distrain.
- Common, which is a profit to be taken in anothers Land; whither also may be referred Estovers, Houseboot, &c. Also a way over Land, liberty to Fish, Hunt, draw water, or the like.

TABLE 9.

A bare hereditament, that concerns the person, is

- Of the person himself, as a Villain.
- By reason of the person, *viz.*
  - An Annuity, which is a yearly Rent to be had of the person of the grantor.
  - A Corody, which is a portion for ones sustenance or cloathing.
  - An Office, which is a duty of Attendance upon a Charge.

A Prerogative Hereditament, which is derived from the Kings Prerogative, and is termed a Franchiſe, being a Royal Priviledg in the hands of a Subject; as Markets, Fairs, Toll, and whatſoever Liberties elſe, which (created at firſt by the Kings ſpecial Grant, or of their own nature belonging to him) are given to a Comm on perſon to have an Eſtate in. Of this ſort alſo are Executions and return of Writs, forfeited Recognizances, Fines, poſt-Fines, Iſſues, Amerciaments, and other Green Wax Money within ſuch a Precinct or Liberty. Alſo power there to make a Coroner, Clerk of the Market, and other Officers; to have therein Treaſure Trove, Deodands, Wreck of the Sea, Waifs, Eſtrayes, the Goods of Felons, and Outlawed perſons, Royal Mines, Royal Fiſh; to keep a Leet, to take Conuſance of Fines, to hold plea of Debts and Damages, Sans Sum, and the like.

TABLE II.

A Chattel, wherein there cannot be several Estates, whereof consider

- The Common Affection, *viz.* That all ones own Chattels (whether in possession or action, as debts, &c.) may be devised by Testament, which is the appointment of an Executor to administer them for him after his death.
- The several kinds, and so it is
  - Real, as a Term for years, or Wardship.
  - Personal, to which divers things belong,
    - In general
      - Bailment, which is the delivery of goods
        - To keep, when only the custody is committed to him, and that is
          - A simple Bailment, when he receives them to keep for another.
          - A Pledg, when he receiveth them for another thing had of him at the time.
        - To employ, as when the Bailiff hath the things to use for anothers profit.
      - Contract, which is a mutual Agreement for the very property of personal things.
    - In particular, *viz.* for the Interest of things uncertain, as
      - Accord, which is an agreement of the parties themselves upon satisfaction executed.
      - Arbitrement, which is an Award of satisfaction by others.

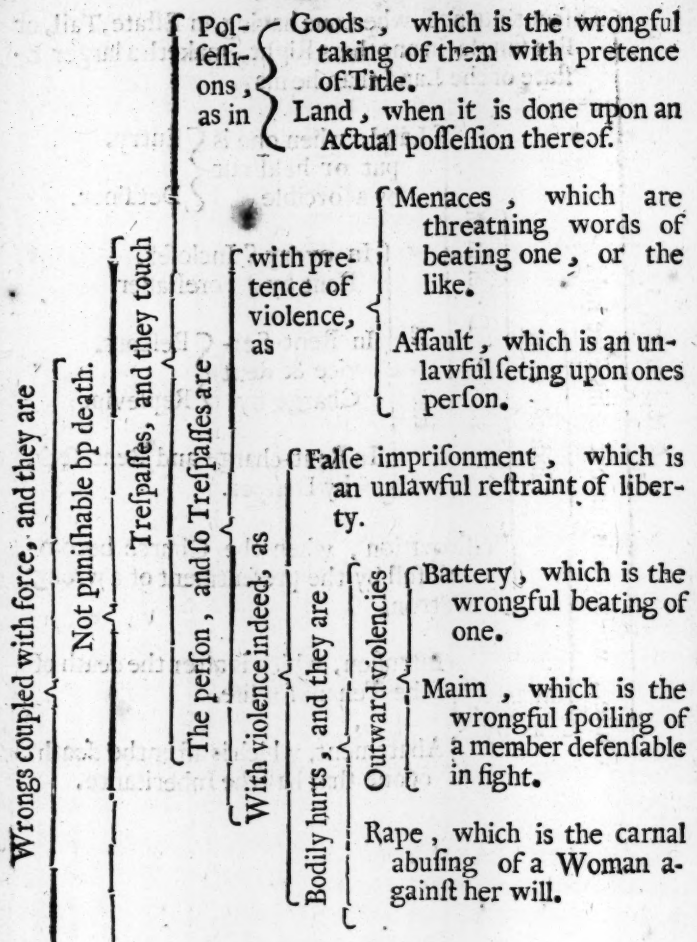
TABLE. 12.

Punishment of offence, which are

- Coupled with force. *Tab.* 14.
- Real wrong. *Tab.* 13.
- Without force, as
  - Trespass upon the Case, as
    - Common, as
      - Misuses, when by wrong one is endamaged, as by slander, or the like, amongst which serve:
        - Disturbance, which is the hindering of that which belongeth to one to do.
        - Nusance, which is an annoyance done to ones Hereditament.
      - Deceit, when the Damage groweth by an undue Sleight, or the like.
      - Conspiracy, to do one wrong, or the like.
    - Offences in the Nature of Trespasses upon the Case, which are (by the Kings Prerogative) punishable like to them, *viz.* by Amerciament, as Non-suit in an Action; Fault in the Original Writ he brings: Or (by the Sheriff) in the Return thereof, making default, when he should appear: And whatsoever other Offences (not being with force) which offer no direct injury to a common person.

A real wrong is

- Discontinuance, when one having an Estate, Tail, or Fee simple in anothers Right, maketh a larger Estate of the Land than he may.
- Ouster, when one is put out of his Free hold
  - Indeed, as by
    - Disseisin of
      - Land, when one is put or held out by a forcible { Entry. / Detainer.
      - Rent, as
        - In every Rent by { Incloser. / Forestaller.
        - In Rent-Service & Rent-Charge by { Rescous. / Replevin.
        - In Rent-charge and Rent-seck, by Denyer.
    - Usurpation, when the Church becometh full by the presentment of a wrong Patron.
  - In law, as by
    - Intrusion, which is after the death of the Tenant for life.
    - Abatement, which is after the death of one that had the Inheritance.


Wrongs coupled with force, and they are
Not punishable by death.
Trespasses, and they touch
Possessions, as in
Goods, which is the wrongful taking of them with pretence of Title.
Land, when it is done upon an Actual possession thereof.
The person, and so Trespasses are
With violence indeed, as
with pretence of violence, as
Menaces, which are threatning words of beating one, or the like.
Assault, which is an unlawful seting upon ones person.
Bodily hurts, and they are
False imprisonment, which is an unlawful restraint of liberty.
Outward violencies
Battery, which is the wrongful beating of one.
Maim, which is the wrongful spoiling of a member defensable in fight.
Rape, which is the carnal abusing of a Woman against her will.
Offences against the Publick, Tab. 15.
Punishable by death, Tab. 19.

Offences against the Publick (termed Contempts) may be committed either,

- Against the King, as,
  - 1. To disobey the Kings Command, By his Writ. / By his Proclamation.
  - 2. To disobey any thing ordained by Statute.
- Against the Commonwealth, *viz.* against
  - 1. The Peace thereof; as Riots, Routs, unlawful Assemblies, breach of the Peace and Good Behaviour, false News, Barretring, Evesdropping, &c. Also all Trespasses with force, for which a man may be both indicted and prosecuted at Law by the Suit of the Party.
  - 2. The Strength, as to send aid to the Kings Enemies, to go beyond Sea without the Kings License, &c.
  - 3. The Justice, *Tab.* 16.
  - 4. The Wealth, *Tab.* 17.
  - 5. The Passages, *Tab.* 18.

3. Publick Offences againſt the Juſtice of the Common wealth, as

1. Perverting of Juſtice, as corrupt Judges, who pervert Juſtice; corrupt or negligent Officers, Enditors, corrupt Jurors, Extortion; Eſcapes, negligent and voluntary, &c.

2. All force againſt the Juſtice of the Realm, as Reſcous of a Felon, or others; Affray in diſturbance of Juſtice, to go armed in the Kings Palace: To ſtrike in *Weſtminſter-Hall*, for which he ſhall loſe his right hand; ſo ſhall he that ſtrikes a Juror in the preſence of the Juſtices, and be alſo committed to perpetual Impriſonment.

3. Conventicles, which comprehend Conſpirators and Confederators, Maintenance, Champerty, &c.

4. Offences in favour of Malefactors, as Miſpriſons of Treaſon or Felony, which for Treaſon is perpetual Impriſonment: Theft-boot, when a man receives his goods from a Thief, with purpoſe to favour and maintain him; here the Puniſhment is Ranſom and Impriſonment; not aſſiſting the Sheriff, Conſtable, or other Officer, &c.

5. Contempt of Juſtice, as he that flies for Treaſon or Felony. He that in caſe of Treaſon, or Felony tarries the Exigent: He that ſuffers himſelf to be outlawed, &c.

6. Falſifying of Juſtice; as Perjury, Subornation, Forgery, Embracery: All other Falſhood in matter of Juſtice, &c.

4. Publick Offences againſt the Wealth of the Common-wealth, and that may be
- In the courſe of Trade, as
  1. To tranſport the Commodities of the Realm without the Kings Licenſe, and paying his Cuſtom, Foreſtallers, Regradors, and Engroſſers, Monopolies, Conſpiracies of Merchants, falſe Weights and Meaſures, &c.
  2. Uttering corrupt Victuals.
  3. Uſury, and all Oppreſſion.
- Out of the courſe of Trade, as Depopulation, burning of Houſes, Barns, &c.

5. Publick offences againſt the Paſſages of the Commonwealth, as Bridges, Cawſeys, High-ways, or Streets broken down or digged up: Unto which place may alſo be referred Common Nuſances, Purpreſtures, &c. Such Nuſances any man may abate. And as to Nuſances, there is a Writ in the Regiſter for any perſon that will ſue, when the Ways, Streets, or Lanes of any Town, City, or Borrough Corporate, or the Suburbs thereof are full of dirt, ſoil, or the like, whereby Infection may be cauſed: And this Writ may be directed to the Maior, or the like, to cauſe them to be cleanſed and kept clean. There is alſo another Writ for removing a Leper, to prevent Infection. Both which Writs will come hereafter to be mentioned in their proper places.

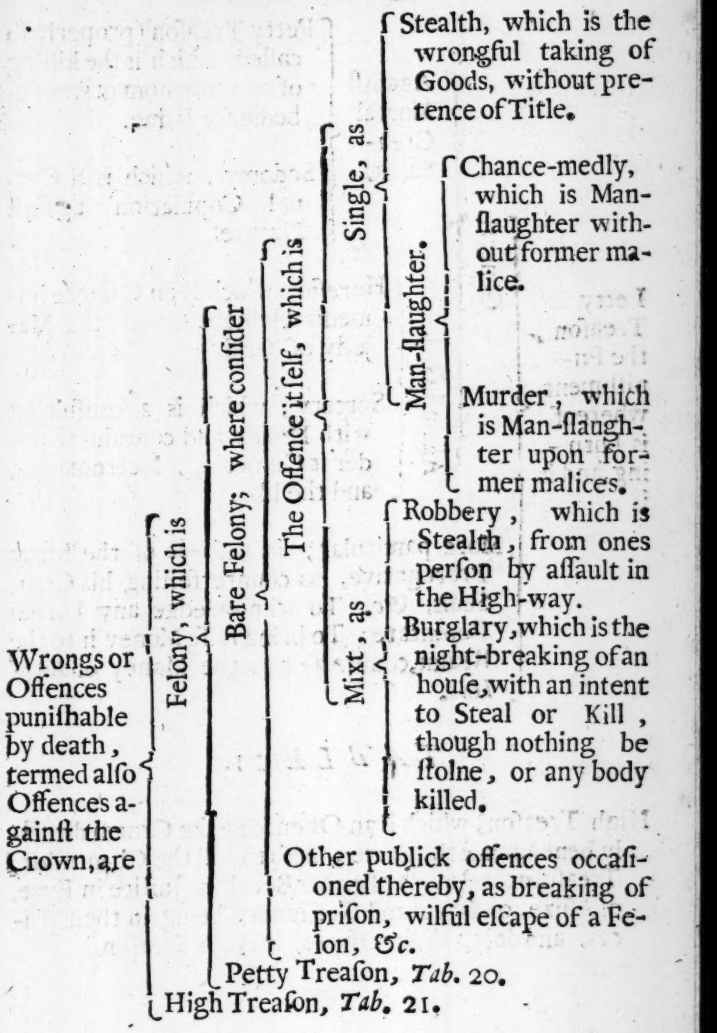

Wrongs or Offences punishable by death, termed also Offences against the Crown, are
Felony, which is
Bare Felony; where consider
The Offence it self, which is
Single, as
Stealth, which is the wrongful taking of Goods, without pretence of Title.
Man-slaughter.
Chance-medly, which is Man-slaughter without former malice.
Murder, which is Man-slaughter upon former malices.
Mixt, as
Robbery, which is Stealth, from ones person by assault in the High-way.
Burglary, which is the night-breaking of an house, with an intent to Steal or Kill, though nothing be stolne, or any body killed.
Other publick offences occasioned thereby, as breaking of prison, wilful escape of a Felon, &c.
Petty Treason, Tab. 20.
High Treason, Tab. 21.

TABLE 20.

Petty Treaſon, the Puniſhment whereof is burning, and it is

- General.
  - Againſt Mortal Creatures.
    - Petty Treaſon (properly ſo called) which is the killing of one to whom private obedience is due.
    - Sodomy, which is a Carnal Copulation againſt Nature.
  - Againſt God.
    - Hereſie, which is an Offence immediately bent againſt the Majeſty of God.
    - Sorcery, which is a conſulting with Devils, and containeth under it Conjuring, Necromancy, and the like.
- More particular, in reſpect of the Kings Prerogative, as counterfeiting his Coin, Seals, &c. To acknowledge any Forein Potentate; To bring falſe Money into the Realm, counterfeit to the Money of *England*.

TABLE 21.

High Treaſon, which is an Offence of the Crown directly bent againſt the State: Alſo to kill the Chancellor, Treaſurer, a Juſtice of either Bench, a Juſtice in Eyre, of Aſſize, or Oyer and Terminer, being in their places, and doing their Offices, is High Treaſon.

TABLE 22.

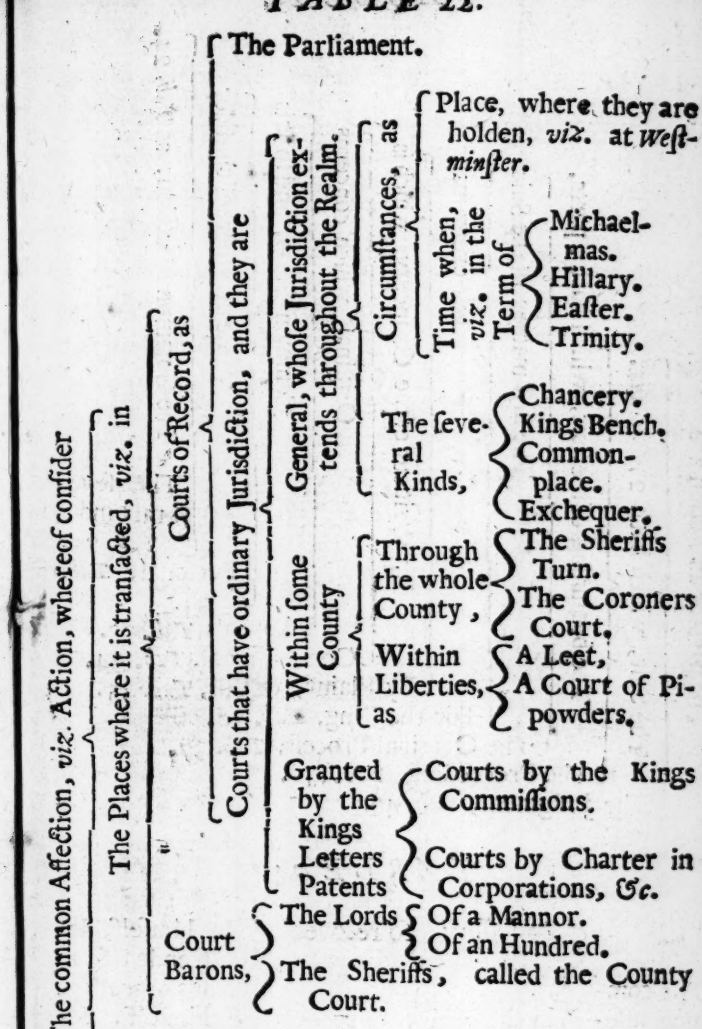

The common Affection, viz. Action, whereof consider
The Places where it is transacted, viz. in
The Parts, Tab. 23.
Courts of Record, as
The Parliament.
Courts that have ordinary Jurisdiction, and they are
General, whose Jurisdiction extends throughout the Realm.
Circumstances, as
Place, where they are holden, viz. at Westminster.
Time when, viz. in the Term of
Michaelmas.
Hillary.
Easter.
Trinity.
The several Kinds,
Chancery.
Kings Bench.
Common-place.
Exchequer.
Within some County
Through the whole County,
The Sheriffs Turn.
The Coroners Court.
Within Liberties, as
A Leet,
A Court of Pipowders.
Granted by the Kings Letters Patents
Courts by the Kings Commissions.
Courts by Charter in Corporations, &c.
Court Barons,
The Lords
Of a Mannor.
Of an Hundred.
The Sheriffs, called the County Court.

TABLE 23.

The parts of an Action are
- The Suit, which hath 2 parts, *viz.*
  - The beginning of the Suit, which hath 2 parts,
    - The first matter of the Suit
      - For every man
        - By Writ out of the Chancery, which is
          - Original, which concerns
            - Common-Pleas, and so it is
              - Real, whereof consider
                - The Common Affection, as *Tab.* 24.
                - The several kinds, *Tab.* 25.
              - Personal, *Tab.* 31.
            - Appeals, *Tab.* 33.
          - Commissional, *Tab.* 34.
        - By Plaint, or Bill, *Tab.* 35.
      - For the King, *Tab.* 36.
    - The Original Process, *Tab.* 37.
  - The Proceeding, *Tab.* 40.
- The Judgment, *Tab.* 46.

TABLE 24.

The common affections, as
- Possessory, to recover a Possession
  - In himself, descended from his Ancestor.
  - In himself, descended from his Ancestor,
- In the Right, to recover a Possession mixt in the right

The several kinds of a real Original Writ, and so it is

The ſeveral kinds of a real Original Writ, and ſo it is

- A *Præcipe*,
- A *Præcipe quod reddat*,
- A Plea of Land,
- A Writ of Entry; the ſeveral kinds thereof will beſt appear, if we conſider
  - Againſt whom it is brought, *viz.*
    - Againſt the firſt party,
    - In the degrees
      - In the *Per.*
      - In the *Per.* and *Cui.*
  - How it grows, *viz.*
    - Without wrong at the firſt,
      - Upon a Wrong, *Tab.* 26.
    - Upon the determination of the firſt Eſtate, *viz.* by reaſon of
      - A particular eſtate ended
        - *Ad terminum qui præteriit.*
        - Entry, *ad communem Legem.*
      - A condition broken, as *Cauſa Matrimonii prælocuti.*
    - Upon diſability of the Perſon that made it,
      - *Dum fuit infra ætatem.*
      - *Dum fuit non compos mentis.*
- A Writ ſhewing the Demandants Title, *Tab.* 27.
- Another real *Præcipe quod reddat*, *Tab.* 28.
- A *Præcipe quod faciat*, *Tab.* 29.
- A *Si fecerit te ſecurum*, *Tab.* 30.

TABLE 26.

Upon a Wrong, *viz.*

- Upon a Discontinuance;
  - For the recovery of a womans Inheritance or Free-hold, after her husbands alienation, and
    - Death, as *Cui in vita*, and for her Heir, a *sur cui in vita*.
    - Divorce, as a *Cui ante divorcium*.
  - For the Successor of a Bishop, or, *&c.* after the discontinuance of his Predecessor, as a *Sine assensu capituli*.
- An Ouster
  - Upon an Intrusion, as a Writ of Intrusion for him in Reversion, or Remainder.
  - Upon a Disseisin, as a Writ of Entry in the *Quibus*, being a Writ in the nature of an Assize.

TABLE 27.

A Writ shewing the Demandants Title, which is

- Possessory, as a Writ of
  - Ayel, after the Death of the Grand-Father, or Grand-Mother.
  - Besayel, after the Death of the Great Grand-Father, or Great Grand-Mother.
  - Cousinage, after the Death of the Great Great Grand-father, or Great Great Grand-mother, *&c.*
- In the right
  - A Writ of Right in his nature, as a
    - Formedon in { Remainder, Reverter,
    - Writ of Escheat,
    - Writ of Dower, *unde nihil habet.*
  - A *Præcipe in Capite*, for the meer right of Lands holden in chief.

TABLE 28.

Another real *Præcipe quod reddat*, in respect of a Seigniory, as
- A Writ of Right of Ward to recover the Wardship.
- A Writ of Right for Disclaimer, for the Lord to prove the Lands to be holden of him, when the Tenant in a Court of Record disclaimeth to hold of him.

TABLE 29.

A Real *Præcipe quod faciat*, which is either to recover an
- Hereditament, and this is either
  - In respect of a Seigniory,
    - A Writ *de consuetudinibus & servitiis.*
    - *Secta ad molendinum.*
  - To recover some other Hereditament,
    - A *Quare Impedit.*
    - A *Quod permittat.*
    - A *Curia claudenda.*
- Some real thing that concerns an Hereditament, as
  - A Writ of Covenant, as to levy a Fine of Lands, &c.
  - Writs in the nature of a Covenant Real,
    - A Writ of Mesne.
    - A *Warrantia Chartæ.*

TABLE 30.

A real *Si fecerit te ſecurum.*

- An Aſſize
  - Of his own poſſeſſion, as
    - An Aſſize of Novel Diſſeiſin.
    - An Aſſize of Nuſance.
  - Of his Anceſtors Poſſeſſion, as an Aſſize of *Mortdanceſtor.*
  - Either of his own or his Anceſtors poſſeſſion, as an Aſſize of Darrein Preſentment.
- A *Furis utrum*, for a Parſon or Vicar, upon his Predeceſſors Alienation.
- Others
  - Such as be between Privies in Blood, as
    - A *Partitione facienda.*
    - A *Nuper obiit.*
  - A *Quo jure* to try for Common.

TABLE 31.

A perſonal Original Writ is alſo

- A *Præcipe*,
  - A *Præcipe quod reddat*,
    - Debt, and a writ of Annuity.
    - Detinue.
  - A *Præcipe quod reddat*,
    - An action of Account.
    - An action of Covenant.
- A *Si fecerit te ſecurum*, *Tab.* 32.

TABLE. 32.

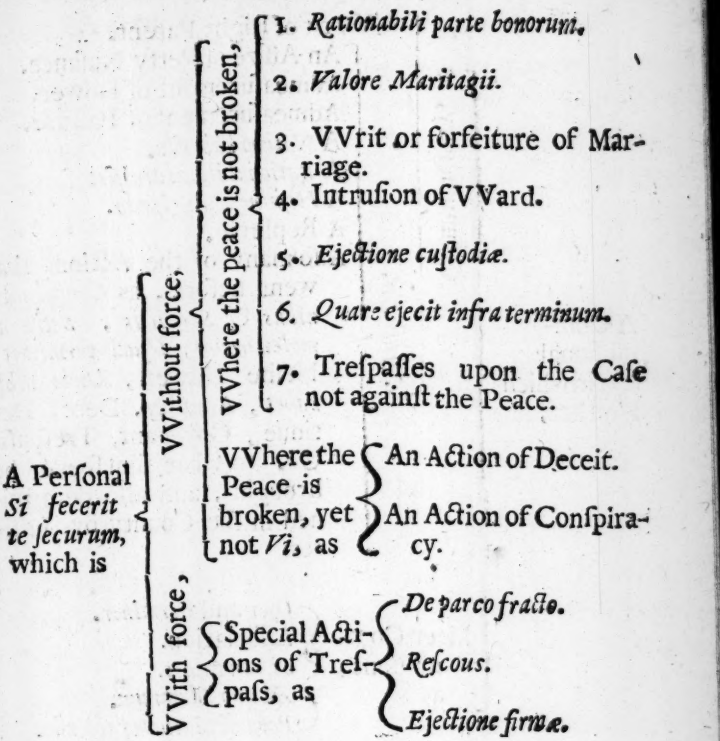


TABLE 33.

An Appeal which concerneth life, and is the parties private Action, prosecuting also for the Crown, in respect of a Felony, and this is given only to the Heir of the party slain.

TABLE 34.

A Commissional Writ, which is either,

- Commissionary, as
  - A VVrit of Right Patent.
  - A Justicies.
    - An Assize of Petty Nusance.
    - Admeasurement of Dower.
    - Admeasurement of Pasture.
    - A *Nativo habendo.*
    - A *Rationabilibus divisis.*
    - A *Homine replegiando.*
    - A Replevin.
    - Also many of the Actions that went before, as *Consuetudinibus & Servitiis*, *Secta ad molendinum*, *Quod permittat*; Mesne Dower, *Unde nihil habet*, Annuity, Debt, Detinue, Covenant, Trespass, &c. to what sum soever be brought, and also determined in the County by Justices.
- Meer Commissions, as
  - *Oyer* and *Terminer.*
  - Association.
  - *Si non omnes.*
  - *Ad quod damnum.*
  - *Perambulatione facienda.*

TABLE 35.

In Courts that hold Plea without Original VVrit, the Suit may be by

- Plaint in matters that concern Common-Pleas.
- Bill, in Pleas of the Crown; also Officers of any Court (by privilege) may sue or be sued there, and not elsewhere by Bill.

Suits for the King are,

- As enquiry by a Jury, which is an
  - A *Quo Warranto*, for the trying of the right of Franchises.
  - Office to entitle the King to some Possession, whereof consider
    - The several ways how it may be found, *viz. Virtute officii brevis, & Commissionis.*
    - The several Writs or Commissions used therein concerning a Wardship, *viz.*
      - For finding of it,
        - *Diem clausit extremum*, within the year after the Tenants death.
        - *Mandamus* after the year.
        - *Devenerunt*, when the Ancestor died in Ward to the King.
      - For mending it,
        - *Quæ plura melius Inquirendum.*
        - *Datum est nobis intelligi.*
      - For discharge of it,
        - An *Ætate probanda.*
        - A writ of Livery, for Lands *in Capite.*
        - An *Ouster le main*, for other Knight Service Lands.
    - How the party may be reliev'd against it.
      - By Traverse or *Monstrans de droit*, when the King is entitled by Office only.
      - By Petition, when he is entitled by double matter of Record, as when the Office finds an Attainder of Treason, or the like.
  - Presentment or Indictment, to find an Offence against the King, and for Penal Laws, an Information.

The Original Process, which is

- Proper,
  - Single,
    - By the Land,
      - In all real *Præcipes quod reddat*
        - Summons in Land.
        - Grand Cape, to seize it into the Kings hands.
      - A *Mortdanceſtor*, *Furis utrum*, and Darrein Preſentment.
        - Summons.
        - Reſummons
        - and upon default the Inqueſt awarded.
    - By the Poſſeſſions
      - By the Goods, as in Aſſizes of Novel Diſſeiſin and Nuſance, Attachment by the Defendants goods, which he ſhall loſe if he appear not, and upon default the Inqueſt awarded.
      - By the Perſon (in Mayhem, Felony, and Treaſon) *Cap. Exig.* Outlawry.
  - Mixt,
    - By the Goods and Lands
      - In all other real actions, and in all perſonal actions, (except Treſpaſs, and offences againſt the Publick,) and alſo in all *Juſticies*,
        - Summons by the goods.
        - Attachment.
        - Diſtreſs infinite, and iſſues of the Land.
      - In all Treſpaſſes upon the Caſe (except deceit and conſpiracy) and in all offences in the nature of treſpaſſes upon the caſe,
        - Attachment.
        - Diſtreſs infinite,
        - & Iſſues
      - By the Goods and Perſon, as in Treſpaſs *vi*, Deceit, Conſpiracy, and Offences againſt the Publick; Attachment, Diſtreſs infinite, and upon *nihil* returned, 3. *Capias exigent*, Outlawry.
- Improper, *Tab.* 38.

Improper, which is not to bring any matter into Plea, or ſolemn Action; but only to do, or leave undone ſomething, and it is

Commandatory, as

- *Dote aſſignanda.*
- *Homagio capiendo.*
- Scutagio habendo.
- *De Corrodio habenda.*
- *De Annua penſione hab.*
- *De Libertatibus alloc.*
- *De executione Judicii.*
- *De reſtitutione Temporalium.*
- *De ſecuritate Pacis.*
- *De vi laica removenda.*
- Of cleanſing Streets.
- *De excommunicato capiendo.*
- *De excommunicato deliberando.*
- *De Leproſo amovendo.*
- *De cautione admittenda.*
- *De hæretico comburendo.*
- *De Coronatore exonerando.*
- *De Coronatore eligendo.*
- *De exoner. vir. foreſt.*
- *De Electione vir. foreſt.*
- A VVrit for the Royal Aſſent, to elect an Abbot.
- *De ſecuritate invenienda.*
- All *Dedimus poteſtatems, de fine levando, de attornato faciendo*, &c.

Prohibitory, *Tab.* 39.

Prohibitory, as

1. A Protection, *Cum clauſula nolumus*, to free ones poſſeſſions, that nothing be taken againſt his will for the Kings Buſineſs.

2. To diſcharge Spiritual Perſons of Fifteens.

3. *Quod Clerici non elegantur in Officium Ballivi*, &c.

4. To forbid Tenant in Dower, by the Curteſie, or Guardian by Knight ſervice, or in Soccage to commit Waſt, to the deſtruction of the Inheritance.

5. A *Quo minus*, for Grantee of Eſtover, to reſtrain the Grantors from committing Waſt, ſo as he cannot have his Eſtovers.

6. *De exoneratione ſectæ*, for Tenants by Suit of Court or other Services, that they be not diſtrained to do the ſame for ſuch time as they ought to hold the Land diſcharged.

7. *De deonerando pro rata*, to diſcharge the Tenant of parcel of the Land according to the Rate of his Land, when he is lawfully diſtrained for all the Rent and Services.

8. *De eſſendo quieto de Thelonio.*

9. *De non tenendo in Juratis.*

10. *Ne exeas regnum.*

The Proceedings, which consists in
- The Count, or Declaration.
- The Pleading, which Pleas are
  - The Defendants first Pleas, *viz.*
    - Dilatory, by taking
      - Exceptions
        - In disability
          - To the Jurisdiction of the Court.
          - To the Person.
        - In Abatement
          - To the Writ, as default of form, false Latine, *&c.* & here, if the default be not caused by the Plaintiff, a new Writ may be had by *Fourneis Accounts*
          - To the Count, as insufficiency, variance from the Writ, *&c.*
      - Forein Advantages
        - In all Actions, as *Oyer* of the Writ, Condition, *&c.*
        - In real actions, as
          - View.
          - Aid prayer
          - Voucher.
        - In certain personal Actions,
          - Garnishment.
          - Enterpleader, which may also be in a *Quare impedit.*
      - Sanctuary, and there continuing, *viz.* for Treason, and other Capital Offences.
    - To the action, as
      - Pleas in Bar.
      - Confessions, to which place Abjuration may be referred, when one guilty of bare Felony flieth to the Church, *&c.* and there before the Coroner confesseth the Fact, and abjures the Realm.
  - The mutual Pleas of Plaintiff and Defendant, *Tab.* 41.
- Other mean Acts, *Tab.* 42.

TABLE 41.

The Mutual Pleas of Plaintiff and Defendant, *viz.*

- The declaring before Issue, as Replication, Rejoynder, Sur-rejoynder, *&c.*
- The Issue it self
- Of the Fact, and then the Trial is
  - 1. Of a Matter done in the County, by Jury, where challenges are allowed, *viz.*
    - To the Array.
    - To the Poles.
  - 2. In Writs of Right or Appeals for life by Battail.
  - 3. In a Writ of Dower (when the Issue is taken upon the death of her Husband) by witness.
  - 4. By wager of Law.
    1. When the Tenant in a real *Præcipe quod reddat* was not summoned.
    2. In meer personal actions growing without deed or privity of others.
    3. In Plaints in Court Barons.
- Of the Law, as a Demurrer, which is when (admitting the matters alledged) either of them resteth in the Judgment of the Law.

TABLE 42.

Other mean Acts, as

1. Apparance, where, of Eſſoins, which are
   - Common, as *Eſſoine de mal venir.*
   - Special
     1. Of going beyond Sea.
     2. Of going *ad terram Sanctam.*
     3. Of the Kings Service.
     4. *De malo lecti.*
2. Continuance,
   - By Proceſs
   - Upon the Roll
     - *Dies datus.*
     - *Imparlance.*
3. Judicial Proceſs,
   - A Meſne Proceſs, which is for any neceſſary act to be done, as againſt Voucher, Prayer in Aid, alſo
     1. Upon a Fine levied to compel Attornment, as
        1. *Per quæ ſervitia.*
        2. *Quem redditum reddit.*
        3. *Quid juris clamat.*
     2. In Petitions a Writ of Search.
     3. In Real *Præcipe,* upon a Default, Petty Cape.
     4. Upon Default, after Voucher, a Petty Cape, *ad valentiam.*
     5. In ſuch as are for other Hereditaments, upon default, a Diſtreſs,
     6. Againſt, Jurors
        1. A *Venire facias.*
        2. A *Habeas corpora.*
        3. A Diſtreſs infinite.
   - Proceſs in nature of new Originals, *Tab.* 43.

Process in the nature of new Originals, & they are

Commandatory, *viz.* such as command something to be done,

1. Re-summons, Re-attachment.
2. All certificatory Writs.
3. A *Certiorari*, to remove a Record into the Chancery.
4. Writs to remove Suits,
   - By VVrit, as a
     - *Tolt*, to remove a Writ of Right out of the Lords into the County Court.
     - *Pone*, to remove out of the Lords Court into the Common-place in all other causes.
   - By Plaint as a
     - *Recordare*, to remove Plaints in the County Court.
     - *Accedas ad curiam*, to remove Plaints in a Court Baron.
5. A *Mittimus*, to send a Record out of the Chancery into another Court of Record.
6. A *Procedendo*, to proceed in Suits.
7. A Consultation, to proceed in the Spiritual Court.
8. A VVrit of Main-prise, to set one at liberty upon Bail.
9. A Recaption, for him whose Goods are distrained for the same thing.
10. A VVrit *de Magna Assiza eligenda*.
11. A Certificate of Assize to Jurors, to give a more perfect verdict.
12. A *Proprietate probanda*.

Prohibitory VVrits, *Tab.* 45.

Prohibitory Writs, or Proceſs, as
- 1. Prohibitions, of this kind is an *Indictavit*.
- 2. A *Superſedeas*, of which kind are
  - 1. A VVrit of Peace.
  - 2. A *Libertate probanda*.
  - 3. An *Identitate nominis*.
- 3. Protections *Cum clauſula nolumus*, as
  - *Protectio quia profecturus.*
  - *Protectio quia moratur*; whether alſo may be referred *Protectio quia in priſona.*
- 3. *Eſſoine de malo lecti.*
- 5. A *Ne admittas.*
- 6. A *Quare incumbravit.*

TABLE 46.

Judgment which hath Judicial Writs belonging to it, *viz.*

Meer Judicial, and they are

Such as lye within a year and a day after the Judgment,

In personal Actions to have Execution of his

In real Actions

1. *Habere facias seisinam*, to put him in possession upon a Free-hold recovered.
2. A Writ to the Bishop to admit ones Clerk.

Possessions, as

1. *Fieri facias*, to levy Execution upon his Chattels.
2. *Levari facias*, to levy Execution of the profits of his Land and Chattels.
3. *Habere facias possessionem*, upon recovery of a Term for years in an *Ejectione firma*, &c.
4. A *Distringas*, for the Kings Amerciaments, &c.

Bodily, as

Capias ad satisfaciendum.
Capias pro fine Regis. } For the
Capias Utlagatum. } King.

A *Scire facias*, to warn the Defendant, after a year, upon recovery in real actions, to shew cause why the Plaintiff should not have Execution.

New Originals in the nature of Judicial Writs, to order some matters concerning Judgments, and these are grounded

- Upon an Errour
  - A Writ of Error, which is upon an Errour in a Court of Record.
  - A Writ of false Judgment, which is upon an Errour in a base Court.
- Otherwise, as
  - Attaint, which is to enquire whether a Jury of twelve men gave a false Verdict.
  - *Audita querela*, which is for one being, or to be in Execution, to relieve him upon good matter of discharge which he hath no means to plead.

A TABLE, ſhewing the Pages in the Engliſh Copy of Sir *Henry Finch*'s Treatiſe of the Law, from whence each Tablet takes its beginning.

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FINIS.

Ex. J. Ir.